

**AGENDA**  
**WYOMING CITY COUNCIL MEETING**  
**CITY COUNCIL CHAMBERS**  
**MONDAY, NOVEMBER 2, 2020, 7:00 P.M.**

- 1) Call to Order**
- 2) Invocation** – Pastor Tim Ryder, Grand Rapids First 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) Resolutions**
  - a) To Approve Remote or Partially Remote Meeting Rules
- 6) Student Recognition**
- 7) Approval of Minutes**  
From the October 19, 2020 Regular Meeting
- 8) Approval of Agenda**
- 9) 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.*
- 10) 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.*
- 11) Presentations and Proclamations**
  - a) Presentations
  - b) Proclamations
- 12) Petitions and Communications**
  - a) Petitions
  - b) Communications
- 13) Reports from City Officers**
  - a) From City Council
  - b) From City Manager
- 14) Budget Amendments**
- 15) Consent Agenda**
- 16) Resolutions**
  - b) To Authorize the Mayor and City Clerk to Execute an Amendment to the Streetlighting Contract with Consumers Energy Company
  - c) To Approve the Restated Bylaws of the Greater Wyoming Community Resource Alliance

**17) Award of Bids, Contracts, Purchases, and Renewal of Bids and Contracts**

- d) To Accept a Quote from System Specialties Company for the Purchase of Rotork Actuators and to Authorize the City Manager to Execute the Contract
- e) To Accept a Proposal from Dixon Engineering, Inc. to Provide Technical Specifications and Project Administration for the Rehabilitation of a Five Million Gallon Storage Tank and to Authorize the Mayor and City Clerk to Execute the Agreement
- f) To Accept a Quote from Kamminga & Roodvoets, Inc. to Perform the Discovery and Verification of Yard Piping at the Water Treatment Plant and to Authorize the Mayor and City Clerk to Execute the Contract
- g) To Concur with the Emergency Repair of a Salt Spreader and to Authorize Payment to West Michigan International
- h) For Award of Bid
  - 1. Automotive Body Repair

**18) Ordinances**

- 17-20 To Amend Chapter 14 of the Code of Ordinances by Adding Article XIII to Regulate Mobile Food Vendor Businesses in the City and Provide Penalties for Violations of That Article (First Reading)
- 18-20 To Amend Chapter 90 of the Code of Ordinances by Adding Section 90-331 in Article 3 (First Reading)

**19) Informational Material**

**20) 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.*

**21) Closed Session** (as necessary)

**22) Adjournment**

11/02/2020  
City Atty

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO APPROVE REMOTE OR PARTIALLY REMOTE MEETING RULES

WHEREAS:

1. 2020 PA 228 amended Michigan's Open Meetings Act to allow remote or partially remote public meetings under certain circumstances.
2. Those meetings need to comply with certain procedural requirements among which is the adoption of rules related to such meetings.
3. The Remote or Partially Remote Meeting Rules attached as Exhibit A to this resolution are prepared in a form to be applicable to meetings of any public body that is a public body created by the city, including the City Council.

NOW, THEREFORE, BE IT RESOLVED:

1. The Remote or Partially Remote Meeting Rules attached as Exhibit A are approved and shall be applicable to any City Council meetings that are held remotely or partially remotely.
2. The Remote or Partially Remote Meeting Rules shall be applicable to any meeting held by a public body created by the city. However, each of those bodies is encouraged to approve those rules at the beginning of its next meeting.
3. All resolutions and parts of resolutions are rescinded to the extent of any conflict with this resolution.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. Vandenberg, Wyoming City Clerk

ATTACHMENTS:

Exhibit A – Remote or Partially Remote Meeting Rules

Resolution No. \_\_\_\_\_

## Exhibit A

### Remote or Partially Remote Meeting Rules

This city public body will use the following rules to meet remotely or partially in-person and partially remotely.

1. The notice of the meeting will be posted on the city's website stating:
  - A. Why the meeting is being held remotely or partially in-person and partially remotely.
  - B. The date and time of the meeting.
  - C. If in-person attendance is allowed, the place of the meeting. It is noted that all persons entering the building at which the meeting is being held must (1) satisfactorily complete a health questionnaire, and (2) wear a face covering in compliance with MDHHS requirements.
  - D. How to remotely participate in the meeting. The links to connect to the meeting shall be provided on the website, along with telephone numbers, and any other means to connect. Persons wishing to remotely attend the meeting cannot be required to register or identify themselves to do so.
  - E. How persons may submit comments prior to the meeting. Options shall be given for e-mail and voice message submissions with those provided prior to 2 hours before the meeting being forwarded to all members of this body.
  - F. How comments can be made remotely at appropriate time(s) during the meeting. Options shall be given for making comments by e-mail or speaking during the meeting. There shall be a means for making verbal comments at meetings during the appropriate time(s).
  - G. How to obtain accommodation for language or other assistance.
  - H. How to access the full agenda for the meeting online.
2. The meeting shall be held in a manner that allows all members of this body attending the meeting to be heard by one another and the public and that allows all comments made by the public at appropriate times during the meeting to be heard by all members of the public body attending the meeting and by other members of the public.
3. At the beginning of the meeting, the person chairing the meeting shall:
  - A. State the reason the meeting is being held remotely or partially remotely.
  - B. Identify the members of this body, if any, who are present in person.
  - C. Ask each member of this body, if any, who are attending remotely to (i) identify themselves, and (ii) state the county, city, township or village in which that member is located while attending remotely.
  - D. Determine that notice of the meeting was provided as required in rule 1. This might occur by asking for affirmation from the clerk or other city officer or staff member who provided the notice.
4. During the meeting:
  - A. If there are scheduled public hearings, the person chairing the meeting shall:
    - (1) Ensure all members of the body who are present (either in-person or remotely) at the meeting have been provided and have had the opportunity to review copies of all comments received before the meeting whether by mail, e-mail or voice message. If not, those comments will be read or played during the public hearing.
    - (2) Ensure all written materials provided in-person, if public in-person attendance is provided, are read and/or displayed to the members of the body during the meeting.
    - (3) Ensure all members of the public who wish to do so may speak to and be heard by all members of this body attending the meeting.
  - B. There will be opportunity, as designated in the meeting agenda, to address items on the agenda that are not part of a scheduled public hearing and to address items not on the agenda. During any such opportunity, the person chairing the meeting shall:

have been provided and have had the opportunity to review copies of all comments received before the meeting whether by mail, e-mail or voice message. If not, those comments will be read or played during the public hearing.

(2) Ensure all written materials provided in-person, if public in-person attendance is provided, are read and/or displayed to the members of the body during the meeting.

(3) Ensure all members of the public who wish to do so may speak to and be heard by all members of this body attending the meeting.

C. Public hearings and opportunities to address agenda and non-agenda items are opportunities to address this body.

(1) They are not times for dialog or debate. Generally, no response will be provided to any comments, though the person chairing the meeting may ask for response or a comment or refer the matter to city staff for follow-up.

(2) Comments are limited to 3 minutes.

D. Persons who are disruptive at the meeting, either in-person or remotely, will be excluded from the meeting.

E. If there is a closed session of this body as provided by law that closed session will exclude persons from participating except as otherwise allowed for an in-person closed session.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK  
TO EXECUTE AN AMENDMENT TO THE STREETLIGHTING  
CONTRACT WITH CONSUMERS ENERGY COMPANY

WHEREAS:

1. The City has had a contract with Consumers Energy Company (CE) for CE owned streetlights throughout the City for many years.
2. The City desires to have Consumers Energy Company install one (1) 46-watt LED post top streetlight located in the cul-de-sac of Azena Ct.
3. Consumers Energy will place the one streetlight and necessary appurtenances at a cost of \$481, which will be paid by the developer.
4. Consumers Energy has submitted the attached modification to the streetlighting contract to address this change.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized to execute the attached Authorization for Change in Standard Streetlighting Contract and the accompanying Consumers Energy Resolution.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Authorization for Change in Standard Lighting Contract

Consumers Energy Resolution

Vicinity Map

Resolution No. \_\_\_\_\_



**AUTHORIZATION FOR CHANGE IN  
STANDARD LIGHTING CONTRACT  
(COMPANY-OWNED) FORM 547**

Contract Number: 103016902985

Consumers Energy Company is authorized as of 9/2/2020, by the City of WYOMING, to make changes, as listed below, in the lighting system(s) covered by the existing Standard Lighting Contract between the Company and the City of WYOMING, dated 2/1/2013.

Lighting Type:  
General Unmetered Experimental Lighting Rate GU-XL

Notification Number(s):  
1052819063

Construction Work Order Number(s):

Except for the changes in the lighting system(s) as herein authorized, all provisions of the aforesaid Standard Lighting Contract dated 2/1/2013 shall remain in full force and effect.

City of WYOMING

By:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed)

Its

\_\_\_\_\_  
(Title)

This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

**RESOLUTION**

RESOLVED, that it is hereby deemed advisable to authorize Consumers Energy Company to make changes in the lighting service as provided in the Standard Lighting Contract between the Company and the City of WYOMING, dated 2/1/2013, in accordance with the Authorization for Change in Standard Lighting Contract dated 9/2/2020,

heretofore submitted to and considered by this  commission  council  board ;and

RESOLVED, further, that the \_\_\_\_\_ Clerk be and are authorized to execute such authorization for change on the behalf of the City.

STATE OF MICHIGAN  
COUNTY OF Kent

I, \_\_\_\_\_, Clerk of the City of WYOMING, do hereby certify that the foregoing resolution was duly adopted by the  commission  council  board of said municipality, at the meeting held on \_\_\_\_\_.

\_\_\_\_\_

Dated:

Municipal Customer Type: City

\_\_\_\_\_

## GENERAL UNMETERED EXPERIMENTAL LIGHTING RATE GU-XL

<i>Number of Luminaires</i>	<i>Nominal Watts</i>	<i>Luminaire Type</i>	<i>Fixture Type</i>	<i>Fixture Style</i>	<i>Install Remove</i>	<i>Location</i>
1	<u>46</u>	<u>LED</u>	<u>Post Top</u>	<u>Traditional</u>	<u>Install</u>	AZENA CT - END OF CUL-DE-SAC



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO APPROVE THE RESTATED BYLAWS OF THE  
GREATER WYOMING COMMUNITY RESOURCE ALLIANCE

WHEREAS:

1. The Greater Wyoming Community Resource Alliance (GWCRA) worked with city staff to review and revise the commission's bylaws.
2. The GWCRA approved the restated bylaws at its meeting on October 27, 2020.
3. The City Council must approve the restated bylaws.

NOW, THEREFORE, BE IT RESOLVED:

1. The restated bylaws of the GWCRA are approved by the Wyoming City Council.
2. The restated bylaws are effective immediately and until such time further amendments are necessary.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:

Restated Bylaws

Resolution No. \_\_\_\_\_

**GREATER WYOMING COMMUNITY RESOURCE ALLIANCE**  
**AMENDED AND RESTATED BYLAWS**

ARTICLE I  
**PURPOSE AND MEMBERSHIP**

1.1 The Greater Wyoming Community Resource Alliance (“**GWRCA**”) was incorporated as a Michigan nonprofit corporation in 2007, as an exempt organization formed for charitable, scientific, and educational purposes under subsection 501(c)(3) of the United States Internal Revenue Code, to provide for a means to positively improve the fabric of the community through the promotion of social, cultural, environmental, economic and health and wellness programs.

1.2 The GWRCA is a non-stock, membership organization. All persons, regardless of residency, who believe in the purposes of the GWRCA are welcome to join.

ARTICLE II  
**GOVERNANCE**

2.1 The GWCRA will be governed by an executive board comprised of not less than 3 but not more than 11 members, three of whom will be those City of Wyoming, Michigan (“City”) officers designated in section 2.2, and the remainder of whom will be appointed by the City Council of the City (“**City Council**”) for staggered 3-year terms (“**Board**”).

2.2 The following will be *ex officio* members of the Board with full voting rights until the end of their term of office or, if they are designees of the identified City officer, until either the end that officer’s term of office or until that officer rescinds that designation.

- A. A City Council member appointed by the City Council.
- B. The City Manager of the City or the City Manager’s designee.
- C. The Finance Director of the City or the Finance Director’s designee, who shall serve as the Treasurer of the GWCRA.

2.3 To achieve staggering of the terms, the following shall apply:

- A. One-third of the Board members of the initially appointed by the City Council shall be appointed to a term of one year initially, then three years thereafter; one-third of the Board members initially appointed by the City Council shall be appointment shall be appointed to a term to two years initially, then three years thereafter; and the final Board members initially appointed by the City Council shall be appointed to a term of three year terms initially, then three years thereafter.
- B. Any Board members appointed by the City Council to fill a vacancy for an unexpired term shall serve only until the end of that unexpired term.

2.4 There are no term limits. The City Council may reappoint Board members for subsequent terms as many times as the City Council deems appropriate.

2.5 After the initial appointment, the City Council shall appoint Board members to be appointed by the City Council from a list of nominees submitted by a nominating committee comprised of at least two Board Members appointed by the Board Chair. The nominating committee shall submit a list of nominees to the City’s Mayor and to the Board Chair not later than the Friday of the first full week of October of each year. The City Council shall make its appointments no later than its last meeting in December of each year.

2.6 Terms of office for Board members appointed by the City Council (not the *ex officio* members) shall begin on January 1 and end on December 31.

2.7 A Board member may be removed from the Board by a majority vote of the remaining Board members for just cause including but not limited to verbally abusive or violent behavior, illegal acts, failure to perform assigned tasks, failing to disclose or acting with a conflict of interest, or other acts that may interfere with the GWCRA’s fulfillment of its purposes. The Board Chair will notify the Mayor in writing of the removal of a Board member.

ARTICLE III  
OFFICERS

3.1 At its first regular meeting of each fiscal year, the Board shall elect a Chair, Vice-Chair, and Secretary.

3.2 The Chair shall preside at Board meetings and, if called, membership meetings, and prepare the agendas for meetings in consultation with the officer officers.

3.3. The Vice Chair shall act in the Chair's stead in the absence or unavailability of the Chair.

3.4 The Secretary shall take minutes, notify Board members and GWCRA members of meetings, and maintain the GWCRA records.

3.5 The Treasurer shall keep the financial records of the GWCRA, make its payments, handle its deposits and funds, assist in preparation of its budgets and audits.

3.6 All officers shall perform such other acts as may from time-to-time be authorized and directed by the Board.

ARTICLE IV  
MEETINGS

4.1 Regular Board meetings shall be at the dates, times and places established by resolution of the Board, but not less frequently than semi-annually.

4.2 The Chair or any two board members may call a special meeting of the Board at the date, time and place stated in a notice provided to all board members at least 48 hours before the meeting.

4.3 The Board may in its procedures allow for virtual meetings using a conference telephone call, video meeting technology or other means. If allowed by the Board's procedures one or more Board members unable to personally attend an in-person meeting may be allowed to attend, be counted toward a quorum, vote and otherwise fully participate in that meeting by virtual means.

4.4 Board members may not grant others a proxy to vote in their stead.

4.5 The Board shall host an annual membership meeting in January of each year.

4.6 A special membership meeting may be called by the Chair or a majority of the Board members.

4.7 The Board shall, by a majority vote establish and amend as its deems necessary rules of procedure for Board and membership meetings. In the absence of such rules the most current edition of Roberts Rules of Order shall apply.

ARTICLE V  
AUTHORITY AND BUSINESS

5.1 All the business, property and affairs of the GWCRA shall be managed by and under the direction and control of the Board.

5.2 All Board actions must comply with applicable provisions of the City Charter of the City, the City's ordinances, and the policies, practices and direction of the City and City Council.

5.3 The Board may authorize any officer or officers, agent or agents, to enter into any contracts, to execute and deliver any documents or instruments or to acknowledge any document or instrument required by law to be acknowledged in the name of and on behalf of the GWCRA. Such authority may be general or confined to specific instances, but the appointment of any person other than an officer to acknowledge an instrument required by law to be acknowledged must be stated in a written document signed by an authorized Board officer. When the Board authorizes execution of any document or instrument, without specifying the executing officers, the Chairperson or the Secretary may execute it.

5.4 No loans shall be contracted on behalf of the GWCRA and no evidences of indebtedness shall be issued in its name unless authorized by a Board resolution granting authority to do so that is either general or confined to specific instances.

5.5 Two signatures shall be required on all checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation. Signatures shall be made by the Chair and Treasurer. If the Chair or Treasurer is absent or unavailable, the Vice-Chair and/or Secretary are authorized to sign instead.

5.6 All GWCRA funds not otherwise employed shall be deposited from time to time to the credit of the GWCRA in such banks, trust companies or other depositories as the Board may select.

ARTICLE VI  
GENERAL MATTERS

6.1 The GWCRA's fiscal year shall be July 1 to June 30.

6.2 These bylaws may be amended by a resolution of the City Council following a recommendation of the Board.

6.3 Upon dissolution for any reason, all GWCRA assets remaining after paying all GWCRA obligations, debts and liabilities, shall be distributed to the City in accordance with the GWCRA's articles of incorporation.

CERTIFICATION

I certify these Amended and Restated Bylaws of the Greater Wyoming Community Resource Alliance were approved by the City Council of the City of Wyoming at a regular meeting held on \_\_\_\_\_, 2020 following a recommendation from the Executive Board of the Greater Wyoming Community Resource Alliance.

Date: \_\_\_\_\_, 2020

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT A QUOTE FROM SYSTEM SPECIALTIES COMPANY  
FOR THE PURCHASE OF ROTORK ACTUATORS AND TO  
AUTHORIZE THE CITY MANAGER TO EXECUTE THE CONTRACT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council accept a quote from System Specialties Company for the purchase of four Rotork actuators at a cost of \$5,888.00 each at a total cost of \$23,552.00.
2. It is recommended the City Council authorize the City Manager to execute the contract.
3. Funds for the purchase are available in the Grand Valley Regional Biosolids Authority account number 590-590-54800-975.000 and the sewer fund account number 590-590-54400-986.444.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept a quote from System Specialties Company for the purchase of Rotork actuators.
2. The City Council does hereby authorize the City Manager to execute the contract.
3. 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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Contract

Quote

Resolution No. \_\_\_\_\_

## STAFF REPORT

Date: October 20, 2020  
Subject: Purchase of Four Valve Actuators  
From: Dan Kleinheksel, Utility Maintenance Manager  
Date of Meeting: November 2, 2020

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### **RECOMMENDATION:**

It is recommended that the City Council approve the quote as provided by System Specialties for four Rotork actuators in the total amount of \$23,552.00, which includes shipping costs.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Regular and proper upkeep of plant facilities and infrastructure contributes to their longevity, workplace safety, and to the prevention of untimely and costly repairs or replacement that could potentially interrupt the day-to-day operations of the Clean Water Plant.

### **DISCUSSION:**

At the Clean Water Plant an 8” biosolids line is utilized to transfer biosolids between storage tanks and the loading bay where trucks are loaded for hauling biosolids to farm fields. The 8” line is integral to biosolids handling and receives use multiple times each day. During the limited times the line is not in use, such as over a weekend, the line has been found to build pressure as a result of the buildup of naturally formed gases. Consequently, the pressure buildup has caused unexpected spills and safety concerns for our staff and truck drivers during the loading process. And on two occasions violent and sudden release of this pressure has caused a spill when the loading bay was unoccupied.

Clean Water Plant staff reviewed the pipe and valve configuration of the 8” line to determine how to best prevent future spills and mitigate safety concerns. The outcome of this effort is the design of a pressure relief system that will allow built-up pressure to be released back into the storage tanks with remotely actuated valves. This work will require the purchase of four Rotork electric valve actuators which will be installed and integrated into the plant control system by highly skilled Clean Water Plant staff.

Both utility plants have standardized with Rotork valve actuators which have proven to be very dependable and satisfy our stringent quality and performance requirements. Standardization of a piece of equipment allows for low stock of replacement parts and familiarity which reduces labor hours during installation, repair, and maintenance. To continue with this standardization, System Specialties, who is the sole source agent/distributor for Rotork Controls Inc, was contacted to review the application and provided a quote for four Rotork actuators at a total cost of \$23,552.00.

### **BUDGET IMPACT:**

Adequate funds exist in the GVRBA account #590-590-54800-975.000 and the Sewer Fund account #590-590-54400-986.444.

CITY OF  
**Wyoming**  
MICHIGAN

CITY STANDARD CONTRACT  
CITY OF WYOMING, MICHIGAN  
(LESS THAN \$8,500)

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

"City" means: City of Wyoming  
A Michigan municipal corporation  
1156 28<sup>th</sup> Street SW  
Wyoming, MI 49509

"Effective Date" means: October 16, 2020.

"Items" means the parts, equipment or other items or services the City is purchasing from the Contractor as itemized in the Proposal.

"Proposal" means the Contractor's proposal attached as Exhibit B.

"Standard Terms and Conditions" means the attached single page Exhibit A entitled "City Contract Standard Terms and Conditions."

"Contractor" means: Systems Specialties  
(Name of contracting entity)  
A Michigan Corporation  
(State and type of entity, e.g., corporation, limited liability company, etc.)  
390 Enterprise Ct., Ste 200  
(Contractor's street address)  
Bloomfield Hills, MI 48302  
(Contractor's city, state & zip)

TERMS AND CONDITIONS

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

1. Contractor will supply the services and items as detailed in the Proposal.
2. The City will pay the Contractor in accordance with the Proposal.
3. Contractor represents and warrants, except for those specifically waived or modified in this paragraph Contractor is complying with and will comply with the Standard Terms and Conditions. Waived or modified conditions are as follows:

None.  
(Identify those the City Attorney has agreed may be waived or the City attorney approved modifications or write "None.")

4. This is the only agreement between the parties regarding the Purchase that is 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 Contractor.

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

CITY OF WYOMING

Systems Specialties

By: \_\_\_\_\_  
Curtis L. Holt, City Manager

By: Kurt Somsel  
(Signature officer, director or principal of Contractor)  
KURT SOMSEL  
(Typed/Printed Name & Title of Person Signing for Contractor)

Date signed: \_\_\_\_\_, 20\_\_

Date signed: 10/27, 2020

Approved as to form:  
[Signature]  
Scott G. Smith, City Attorney

## CITY CONTRACT STANDARD TERMS AND CONDITIONS

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

2. Legal Compliance. Contractor will comply with applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court. 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. Permits and Inspections. Unless the City Contract or the Proposal states otherwise, Contractor will, without expense to the City, obtain all licenses and permits required to lawfully perform the work under the City Contract and furnish copies of those licenses and permits to the City before commencing work. Contractor will also ensure all inspections required by local, state, and federal agencies and codes are performed.

4. Grant Compliance. If state or federal grant funds have been identified to Contractor as a source of payment for any part of the project, by signing the contract, Contractor (I) represents the Contractor 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. Contractor represents and promises that:

A. Contractor has and will maintain and any personnel engaged by Contractor to provide services or perform work under the City Contract have and will maintain any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan.

B. Contractor has and will maintain and any personnel engaged by Contractor to provide services or perform work under the City Contract have and will maintain any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan.

C. Neither Contractor 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 this 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 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 with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding this Contract had one or more public transactions terminated for cause or default.

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

E. Contractor and any subcontractor are not on and will remain off the Federal System for Award Management list of persons and entities ineligible for federal contracts.

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

6. Nondiscrimination. Contractor and its subcontractors will not discriminate against an employee or an employment applicant in hiring, terms and conditions of employment, or employment-related matters related because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the employee's or applicant's ability to perform the duties of a job or position. "Sex" includes sexual orientation and gender identity or expression. "Gender identity or expression" means the perception by an individual or other person of the gender identity, appearance, behavior, or expression of the individual whether or not that gender identity, appearance, behavior, or expression is different from the gender identity, appearance, behavior, or expression traditionally associated with the sex assigned to the individual at birth. "Sexual orientation" means the term as defined by Michigan Civil Service Commission Rule 9-1. Contractor and its subcontractors will comply with applicable laws, rules, regulations regarding discrimination and inclusion (e.g., Elliott-Larsen Civil Rights Act, 1976 PA 453, Persons with Disabilities Civil Rights Act, 1976 PA 220, and those identified at the website: <https://www.eeoc.gov/>).

7. Ethical Standards. Contractor and its directors, members, partners, officers and employees, as well as any parent, affiliate, or subsidiary organization or subcontractor of Contractor 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 Contractor and no owner, director, officer, member, partner or key employee of any parent, affiliate, or subsidiary organization or subcontractor 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. Contractor will immediately notify the City of any change in this circumstance.

8. Media Releases. Media releases (including promotional literature and commercial advertisements) pertaining to the City Contract or 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. Before beginning work, Contractor and subcontractors will return by e-mail to [accounts payable@wyomingmi.gov](mailto:accounts payable@wyomingmi.gov) a completed an IRS W-9 form).

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

11. Quality. Unless otherwise stated in the Proposal, all materials and items supplied under the City Contract shall be new, the best of their respective kind and free from defects.

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 states otherwise, Contractor will remove and dispose of materials, equipment and other items demolished, removed or replaced during the work and cleanup and remove of all debris resulting from the work. Disposal will comply with applicable law and Contractor shall retain and, upon request, provide the City copies of any required manifest and other disposal documentation.

14. Restoration. Contractor shall restore, without expense to the City, property damaged during or as a result of work under the City Contract to a condition similar and equal to that existing before such damage. If Contractor fails to make such repairs or restoration, the City may, after 48-hours' notice to Contractor, make such repairs or restoration, and deduct costs incurred from amounts due Contractor.

15. Manufacturer Information and Warranties. Contractor will provide the City all manufacturer parts lists, assembly or maintenance information, and other documents provided by the manufacturer for items provided or installed under the City Contract, and will ensure warranties for such items are held by or assigned to the City.

16. Risk Allocation. Contractor is solely responsible for (i) means and methods of the work provided under the City Contract, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) injuries or property damage occurring as a result of its work under the City Contract. Contractor will hold the City and the City's officers and employees harmless from, indemnify them for, 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 Contractor's work under the City Contract. Contractor will reimburse the City for or pay in the City's stead 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 Contractor's work under the City Contract.

17. Insurance.

COMMERCIAL GENERAL LIABILITY
Minimal Limits:
\$1,000,000 Each Occurrence
\$1,000,000 Personal & Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations
Coverage must include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors; (D) 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
Minimal Limits: \$500,000 per occurrence 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 policy to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).
ADDITIONAL INSURED
If the City Contract is for more than \$5,000, General Commercial Liability, Automobile Liability and Excess/Umbrella Liability Insurance shall include an endorsement stating the following are Additional Insureds: the City and all its 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.

If the City requests, Contractor will provide to the City 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. Contractor shall retain copies of all records related to the City Contract, including, without limitation, items supplied or used in performance of the City Contract, and all work under the City Contract for at least 6 years after completion of the City Contract. Contractor shall, upon the City's request, allow inspection, auditing and copying of all retained records.

19. Assignment/Beneficiaries. Unless the City Contract states otherwise, (i) none of Contractor's rights or duties 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. Contractor is wholly independent of the City and none of Contractor's personnel shall be or be represented to be City officers or employees. Contractor is solely responsible for the acts, omissions and statements of Contractor's personnel. Contractor is solely responsible for any compensation and benefits to be provided Contractor's personnel for services or work provided under the City Contract. The City has no responsibility to supervise, compensate or insure Contractor or Contractor's personnel.

**ACKNOWLEDGEMENT**

Contractor acknowledges receiving these Standard Terms and, unless modified by the City Contract, (i) they apply to the City Contract and Contractor's work, (ii) Contractor complies and will comply with them, and (iii) the City is relying on them.

**EXHIBIT B**



390 Enterprise Ct. Ste 200 Bloomfield Hills, MI 48302 [www.sysspec.com](http://www.sysspec.com) Phone 800-686-9341 or 248-332-0099

October 16, 2020

Quote #: 10132020KS02 REV 1

Dan Kleinheksel  
City of Wyoming  
Utility Maintenance Manager  
W 616.738.4957 | C 616.377.8969  
[Kleinhekseld@wyomingmi.gov](mailto:Kleinhekseld@wyomingmi.gov)

**REF: Rotork IQT3-Series Actuator  
Truck Loading Station Automation Project**

Dan,

Below please find the pricing for the Rotork actuators for retrofit use on the existing 6" plug valves we looked at on my recent trip to site. This revision updates the quantity to four.

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**Qty (4) Rotork Model IQT500 Electric Actuator**

- Rotork IQT3-Series Electric Motor Operator
- Direct quarter turn output
- Max output torque = 369 Ft-Lbs
  - Estimated valve torque = 244 Ft-Lbs @ 150 psid
- 120/1/60 Power Supply
- Actuator speed = 15-60 seconds (adjustable)
- Non-intrusive Switch Settings
- WT & IP68 Enclosure
- Local LED position indicator
- (4) SPDT Solid State Contacts for end of travel indication or programmable for other indication functions
- Rated at 60 starts per hour (open/close service)
- Adaption kit included for existing 6" Plug valve

**Your Price each..... \$5,888.00**

**Standard Delivery: 10-12 weeks**

Terms: Net 30  
FOB: Shipping Point  
Terms: Above prices are good for 60 days.  
Freight: Included

We are best known by the quality of the products we represent and the service we render these quality products.

SHOULD WE BE FAVORED WITH AN ORDER  
PLEASE MAKE YOUR PURCHASE ORDER OUT TO:

**Systems Specialties Company**

390 Enterprise Court  
Bloomfield Hills, MI 48302  
[singman@syspec.com](mailto:singman@syspec.com)

Thank you again for the opportunity to quote you on your electric actuation needs.  
Should you have any questions please do not hesitate to call.

Sincerely,

*Kurt Somsel*

Kurt Somsel  
231.796.7980 office  
616.490.4132 mobile

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT A PROPOSAL FROM DIXON ENGINEERING, INC. TO PROVIDE TECHNICAL SPECIFICATIONS AND PROJECT ADMINISTRATION FOR THE REHABILITATION OF A FIVE MILLION GALLON STORAGE TANK AND TO AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council accept a proposal from Dixon Engineering, Inc. to provide technical specifications and project administration for the rehabilitation of a five million gallon storage tank.
2. It is recommended the City Council authorize the Mayor and City Clerk to execute the agreement.
3. Funds are available in the water fund capital account number 591-591-57300-986.444.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept a proposal from Dixon Engineering, Inc. to provide technical specifications and project administration for the rehabilitation of a five million gallon storage tank.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the agreement.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report  
Agreement

## STAFF REPORT

Date: October 20, 2020  
Subject: Storage Tank Rehabilitation Oversight  
From: Dan Kleinheksel, Utility Maintenance Manager  
Meeting Date: November 2, 2020

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### **RECOMMENDATION:**

It is recommended that the City Council accept the proposal from Dixon Engineering, Inc. to provide technical specifications, project administration, and oversight during the rehabilitation of the west 5,000,000 gallon concrete storage tank for the estimated amount of \$22,000.00.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Regular and proper upkeep of the water treatment plant infrastructure contributes to the prevention of untimely and costly repairs or replacement that could potentially interrupt the day-to-day operations. Additionally, the concrete tank rehabilitation ensures safe, reliable, and efficient water storage.

### **DISCUSSION:**

Four ground storage tanks are located on the water treatment plant property for the purpose of potable water storage and supply to the City of Wyoming and all wholesale customers. One such storage tank is a 5,000,000 gallon concrete tank that was previously identified as due for painting and requiring inspection.

On September 9, 2020, Dixon Engineering, Inc performed an interior and exterior tank inspection, which was followed with recommendations for repair and painting. The rehabilitation includes power washing the tank, repairing concrete spalling and cracking, and an exterior overcoat with an acrylic system. Additionally, the fill pipe, overflow pipe, and vent screen are in need of modification or replacement to comply with current EGLE requirements.

Dixon Engineering, Inc. will develop project specifications for the rehabilitation of the west concrete tank based on the previous inspection of the exterior and wet interior areas. They will provide recommendation of the lowest qualified bidder to perform the repairs, modifications, and protective overcoat application. Also included in the Dixon Engineering, Inc. proposal is the oversight of repairs and application of the overcoat system which will consist of daily inspections. This is required to verify standards are met to ensure the work will endure the expected fifteen, or more, years of service.

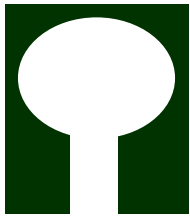
**BUDGET IMPACT:**

Adequate funds exist in the Water Fund Capital Account #591-591-57300-986.444.



**CITY OF WYOMING****PROFESSIONAL SERVICES CONTRACT STANDARD TERMS AND CONDITIONS**

1. **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.
  
2. **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 Contractor 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 this 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 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 with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding this Contract had one or more public transactions 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. Contractor and any subcontractor are not on and will remain off the Federal System for Award Management list of persons and entities ineligible for federal contracts.
  - E. Neither Professional nor any subcontractor is an "Iran linked business" under Michigan's Iran Economic Sanctions Act, 2012 PA 517.
  
3. **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/>).
  
4. **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](mailto:accountspayable@wyomingmi.gov) an IRS W-9 form (available at [www.IRS.gov](http://www.IRS.gov)).
  
5. **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.
  
6. **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.



# DIXON

**ENGINEERING & INSPECTION SERVICES  
FOR THE COATING INDUSTRY**

1104 Third Avenue  
Lake Odessa, MI 48849  
Telephone: (616) 374-3221  
Fax: (616) 374-7116

**AGREEMENT BETWEEN OWNER AND DIXON  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of: \_\_\_\_\_ (“Effective date”) between **City of Wyoming, Michigan** (“Owner”) and Dixon Engineering, Inc. of Lake Odessa, Michigan (DIXON).

IN WITNESS WHEREOF, the (“Owner”) and (“DIXON”) have executed this Agreement. The Owners Project, of which DIXON’s Services under this Agreement are a part, is generally identified as follows: **Technical Specifications, Project Administration, Preconstruction Meeting, Exterior Coating Observation, and One (1) Year Exterior Warranty on the 5,000,000 Gallon Concrete Reservoir (Water Plant West)** (“Project”).

Other terms used in this Agreement are defined in EXHIBIT GP and EJCDC C-700-18®, Standard General Conditions of the Construction Contract, incorporated by reference into this Agreement. Also included is EXHIBIT D, the City of Wyoming Professional Services Contract Standard Terms and Conditions.

This service fee is the Estimated Amount **\$22,000.**

**Proposals / Agreement Signatures**

Eric Binkowski, Project Manager January 29, 2020  
PROPOSED by DIXON (Not a contract until approved by Project Manager or Officer) PROPOSAL DATE

CONTRACT APPROVED BY OWNER	POSITION	DATE
Co SIGNATURE (if required)	POSITION	DATE
	Project Manager	October 27, 2020
AGREEMENT APPROVED by DIXON	POSITION	DATE

With the execution of this Agreement, DIXON and Owner shall designate specific individuals to act as DIXON’s and Owner’s representatives with respect to the services to be performed or furnished by DIXON and responsibilities of Owner under this Agreement, said individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

Designated Person: Dan Kleinheksel  
Address for Owner’s receipt of notices:  
City of Wyoming  
16700 New Holland St.  
Holland, MI 49424  
Email: dankleinheksel@wyomingmi.gov

Designated Person: Eric Binkowski  
Address for DIXON’s receipt of notices:  
Dixon Engineering, Inc.  
1104 Third Ave.  
Lake Odessa, MI 48849  
Email: eric.binkowski@dixonengineering.net

Any notice required under this Agreement shall be in writing, addressed to the Designated Contract Person at its address on this signature page, or given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices be shall effective upon the date of receipt.

Owner and DIXON further agree as follows:

## **ARTICLE 1 SERVICES OF DIXON**

### **1.01 DIXON shall provide or cause to be provided:**

- A. Contract and Project Management (Basic) Services: EXHIBIT A Part 1
- B. Resident Project Representative (RPR): EXHIBIT A Part 1
- C. Other Services: Services beyond the scope of Exhibit A are Additional Services.

## **ARTICLE 2 OWNER'S RESPONSIBILITIES**

### **2.01 Owner shall provide or cause to be provided:**

- A. Responsibilities set forth in Exhibit A, Part 1, Section C of each phase.
- B. Owner shall arrange for safe access to and make all provisions for DIXON to enter upon public and private property as required for DIXON to perform services under the agreement.

## **ARTICLE 3 SCHEDULE FOR RENDERING SERVICES**

### **3.01 Commencement:**

- A. DIXON is authorized to begin rendering services as of the Effective Date or mutually agreeable date.
- B. DIXON shall complete its obligations within a reasonable time. If a specific period of time for rendering services, or specific dates by which services are to be completed are required, the dates are provided in Exhibit A, and are hereby agreed to be reasonable.

## **ARTICLE 4 INVOICES AND PAYMENTS – PER EXHIBIT C**

## **ARTICLE 5 OPINIONS OF COST – GENERAL PROVISIONS PER EXHIBIT GP**

## **ARTICLE 6 GENERAL PROVISIONS PER EXHIBIT GP**

## **ARTICLE 7 DEFINITIONS**

- A. Whenever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the same meanings indicated in the Construction Contract Documents, EJCDC C-700 18.
- B. Additional definitions pertinent to invoicing or payment can be found in Exhibit C.

## **ARTICLE 8 EXHIBITS AND SPECIAL PROVISIONS**

- A. EXHIBITS Included:
  - 1. EXHIBIT A, DIXON's Services and Owner's Responsibilities.
  - 2. EXHIBIT C, Basis of Fees, Invoicing, and Payment Matters.
  - 3. EXHIBIT C, Attachments C-1 and C-2.
  - 4. EXHIBIT GP, General Provisions from the Agreement and Exhibits.
  - 5. EXHIBIT I, Insurance and Limits of Liability.
- B. EXHIBITS to be added as needed:
  - 1. EXHIBIT J, Special Provisions. Services added at/before Effective date (included in original Agreement sometimes referred to as an Addendum).
  - 2. EXHIBIT K, Amendment to Owner-DIXON Agreement for Services added or changed after effective date of this Agreement or for clarification if requested.
- C. EXHIBITS B, D, F, and H merged with other Exhibits or not used.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

**9.00** Items that pertain to the legal terms of this Agreement. All General Provisions from Article 6 are in Exhibit GP. Those provisions refer mostly to services that result from this Agreement.

### **9.01 Survival:**

- A. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

### **9.02 Severability:**

- A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and DIXON, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **9.03 Successors, Assigns, and Beneficiaries:**

- A. Owners and DIXON are hereby bound, and the successors, executors, administrators, and legal representatives of Owner and DIXON are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be constructed to create, impose, or give rise to any duty owed by Owner or DIXON to any Contractor, other third-party individual or entity, or to any surety for or employee of any of them and not for the benefit of any other party.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and DIXON and not for the benefit of any other party.

### **9.04 Waiver:**

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this agreement.

### **9.05 Accrual of Claims:**

- A. To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### **9.06 DIXON's Certifications:**

- A. DIXON certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement.

### **9.07 Total Agreement:**

- A. This Agreement, (together with the included Exhibits) constitutes the entire agreement between Owner and DIXON and supersedes all prior written or oral understandings. This agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based, whenever possible, on the format of Exhibit K.

**DIXON'S SERVICES AND OWNER'S RESPONSIBILITIES**

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Article 1 and 2 of the Agreement is supplemented to include the following agreement of the parties: DIXON shall provide Contract and Project Management (BASIC) Services, and Resident Project Representative (RPR).

DIXON has combined the six construction project phases into four phases; Design or Technical Specification Phase, Contract Document and Bidding Phase, Construction Phase, and Post Construction Phase. We then included DIXON's Basic Services, RPR Services, and Owner's responsibilities for each respective phase.

**PART 1**

**A1.01 Design Phase – Technical Specifications:**

A. Basic Services:

1. In preparing the Technical Specifications, use Design, Bid, Build Project Strategy.
2. DIXON shall prepare Technical Specifications and Drawings to include:
  - a. Additions to General Conditions of Construction Contract relevant to coating projects.
  - b. Specifications and Drawings for Health, Safety and Structural Repairs if any.
  - c. Specifications for Coating Repair or Replacement.
3. Advise Owner of additional reports, data, information, or services which may be necessary, and assist Owner in obtaining such materials.
4. Furnish two review copies of the Design Phase documents, to Owner, and review those documents with Owner.
5. After receipt, Owner shall review the Design Phase documents and submit to DIXON any comments regarding the furnished items within two weeks of receipt or as mutually agreed.
6. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
7. In response to Owner's comments, as appropriate, make revisions and furnish to Owner one electronic copy of the revised Design Phase documents.
8. DIXON's services under the Design Phase will be considered complete on the date when DIXON has delivered to Owner the revised Technical Specifications.

B. Design Phase – RPR Services–None

C. Design Phase – Owner's Responsibility:

1. Provide DIXON with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints-and upon DIXON's request, obtain, and furnish, such additional Project-related information and data as is reasonably required to enable DIXON to complete its Services.
2. Give instructions to DIXON regarding Owner's procurement of construction services including instructions regarding Notice of Bids, Information for Bidders, Owner's construction contract practices and requirements, insurance and bonding requirements, requirements for electronic transmittals during construction, other information necessary for the finalization of Owner's bidding-related documents, and Construction Contract Documents.
3. Owner shall be responsible for all requirements and instructions that it furnishes to DIXON pursuant to this Agreement. DIXON may use and rely upon such requirements, materials, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

**A1.02 Construction Phase:**

A. Basic Services:

1. DIXON will consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority

- of DIXON shall be as assigned in EJCDC C-700-18 Standard General Conditions of the Construction Contract.
2. All of Owner's instructions to Contractor will be issued through DIXON, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  3. Engineer or RPR has authority to Stop Work if Engineer or RPR questions the quality of Work or rejects the Work, or if there (in the sole opinion of Engineer or RPR) a potential for creating an environmental contamination.
  4. Finalize Project to observe all items in the contract specifications have been completed and review the quality of workmanship.
  5. Duration of Construction Phase: The Construction Phase will terminate upon written recommendation by DIXON for final payment to Contractors.
- B. RPR Services for Maintenance of Existing Structures
1. Perform services expected of DIXON RPR and as detailed in the EJCDC Construction Contract General Conditions, GC-700-18.
  2. Attend a Preconstruction Meeting, and address questions regarding observation services and coordination of field observations.
  3. Hold Point General:
    - a. Hold Point is a stage of the Construction Project where the Contractor stops Work. Work commences again after the Work is observed and reviewed for compliance.
    - b. A Hold Point Site visit is one observation trip to perform one of the functions below. The number of Site visits required are estimates.
    - c. If two Job Tasks are performed during the same trip, there is no additional charge (i.e. exterior intermediate and pit piping primer).
    - d. The Site visit fees may vary between services (i.e. welding vs. coating) based on the higher compensated weld observer. Hold Point are itemized in EXHIBIT C, Attachment C-1.
  4. Hold Points and RPR Coating Observation Services Common to Hold Point: All services will not be necessary each Site visit observation.
    - a. Review surface preparation and coating materials for approved manufactures.
    - b. Review coating mixing, thinning, and manufacturer's application requirements.
    - c. Monitor environmental conditions prior to and during coating application (i.e. ambient temperature, surface temperature, relative humidity, and dew point).
    - d. Observe applied coating for coverage, uniformity, and cure.
  5. Hold Point Coating Exterior - Observe, Record, Report, and:
    - a. Verify test area for low (LPWC) pressure water blast cleaning meets or exceeds minimum specified standard.
    - b. LPWC for thoroughness and compliance with specifications.
    - c. Prime coat prior to application of the acrylic top coat.
    - d. Topcoat for compliance with specifications.
    - e. Check concrete repair for compliance with specifications.
  6. Hold Point Project Finalization:
    - a. Review all repairs not installed until after coating.
    - b. Examine entire project for damage that occurred during construction or post construction from rigging and de-rigging or other causes.
    - c. Observe the installation of screens, light bulbs, etc.
    - d. Observe Site for restoration to pre-project conditions.
    - e. Formulate a punch list of items to complete.
    - f. Create a second punch list if needed before finalization.
    - g. Finalize the project to assure all items in the contract specifications have been completed, and the quality of workmanship meets contract requirements.

- C. Construction Phase - Owner's Responsibilities:
  - 1. Inform DIXON in writing of any specific requirements of safety or security programs that are applicable to DIXON, as a visitor to the Site.
  - 2. Attend and participate in the Preconstruction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
  - 3. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of DIXON in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on DIXON, then Owner shall compensate DIXON for any related increases in the cost to provide Construction Phase services.

**A1.03 Post Construction Phase:**

- A. Basic Services:
  - 1. Warranty Observation - Exterior only:
    - a. Inspect exterior surfaces to determine extent of paint intactness and quantify any damages or any item which fails to meet warranty requirements of prior paint contract.
    - b. Prepare and submit a letter report (2 copies) documenting all items found that meet or fail to meet warranty requirements and recommendations for repair.
  - 1. Warranty Failure - When observation has determined that warranty requirements were not met then DIXON will:
    - a. Together with Owner, visit the Project to observe any apparent defects in the Work if requested, make recommendations as to replacement or correction of defective Work, or the need to repair any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
    - b. If warranty repair is required provide letter as notice of rejection to Owner so that they may forward to Bonding Company. Notice of rejection may be all inclusive or limited to specific area.
    - c. Provide RPR services during any required correction of any work not meeting requirements of one-year warranty observation.
    - d. Extend contract an additional year and repeat warranty services if repairs warrant a second repair period.
  - 2. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this EXHIBIT A, will terminate thirteen months after the commencement of the Construction Contract's correction period.
- B. Post Construction Phase – RPR Services
  - 1. Detailed above if repairs are needed.
- C. Post Construction Phase - Owner's Responsibilities:
  - 1. Warranty Observation - Exterior only:
    - c. Provide scheduling for mutually agreeable inspection date.
    - d. Provide access to DIXON personnel to all areas scheduled for inspection.
    - e. Provide insurance for Owner's personnel. They are not covered by DIXON's insurance.

**A2.01 ADDITIONAL SERVICES**

- A. Any service not listed or referenced above in Part 1 will be considered an Additional Service.
  - 1. All additional requested services and associated fees shall be documented by an Exhibit K, Contract Amendment signed by both parties.

**BASIS OF FEES, INVOICING AND PAYMENT**

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General Provisions of Article 4 of the Agreement has been moved to this EXHIBIT C:

**Part 1 BASIS OF FEES**

**C1.00 Owner's Responsibility:**

- A. Owner shall pay DIXON for Basic (Project Management and Contract Administration), Resident Project Representative (RPR), and Additional Services as detailed below and as summarized in Attachment 1 to EXHIBIT C. (Exhibit C-1).

**C1.01 Basis:**

- A. Hourly rates of DIXON's employee are per classification in the Standard Hourly Rate and Reimbursable Expense Schedule included in this Exhibit C as Exhibit C Attachment 2. (Ex C-2) A classification that has a range of fees, reflects varying levels of experience within that classification. DIXON reserves the right to select the level of RPR and classification. This decision is at DIXON's discretion only and will be dependent primarily on experience with Owner selected Contractor as well as other factors.
  - 1. Reimbursable expenses are those expenses directly related to and resulting from this Project. These expenses are primarily living expenses and mileage.

**C1.02 Methods of Rate Calculation and Definitions including Limitations:**

- A. Standard Hourly Rate (SHR) Method: An amount equal to the cumulative hours charged to the Project by each classification of DIXON's personnel, times Standard Hourly Rates and Overtime rates for each applicable billing classification. (Exhibit C-2)
  - 1. The SHR method may be used for all services. It is more commonly used on portions of various Phase Services where scheduling and speed are controlled by the Contractor or unforeseen project expenses. (Phase 3 Construction, Basic, and RPR services, and for Additional Services during all phases. Overtime rates apply on weekends, holiday, and over 40 hours per week. When accounting for the 40 hours it applies over 40 hours worked between Monday and Friday, weekend rates are already at Overtime rate. Holiday pay also does not contribute toward the accounting for 40 hours.)
  - 2. The SHR charged by DIXON constitutes full and complete compensation for DIXON services including labor costs, overhead, and profit but not Reimbursable Expenses.
  - 3. The Standard Hourly Rates per employee classification listed in Attachment C-2 do not include reimbursable expenses. The estimated Reimbursable Expenses are NOT calculated and averaged over the classification rate.
    - a. The estimator calculates the number of days a project is expected to require and calculates manpower required to match number of hours and services required.
    - b. The estimator then calculates Reimbursable Expenses based on the same criteria.
    - c. Both the total manpower estimate, and Reimbursable Expenses total estimate are added. And the total estimate is included in the fee schedule shown in Attachment C-1.
- B. Lump Sum (LS) Method: One agreed fee for completing an agreed defined scope of services. The Lump Sum Method fee charged by DIXON constitute full and completed compensation for DIXON's services including labor costs, overhead, and profit, and reimbursable expenses.
- C. The Lump Sum Method is more commonly used by DIXON for portions of the Phases where DIXON has control over a greater percentage of unknowns, such as the Technical Specifications, Bidding and Contract Documents, and Post Construction Phases excluding fees for Additional Services.
  - 1. DIXON may use a Lump Sum for the entire project.

- D. Unit Price (UP) Method: Can be considered individual Lump Sum amounts. Reimbursable expenses are calculated and included in Unit Price methods.
  - 1. The Unit Price Method is used when DIXON completes Hold Point Observations, Project Progress or Preconstruction Meetings, known, controlled portions of the Contract and unknown Post Construction (Additional Services).
  - 2. Exhibit J Amendment: If Amendment changes Scope of Services then Additional Services may be negotiated Lump Sum or Standard Hourly Rate Method.
  - 2. Exhibit K Addendum: Addenda items (if any) may be negotiated according to any agreed method.
  - 3. Subconsultants or Subcontractor Service Fees are not included in the SHR, LS, or UP methods. DIXON will invoice for Subconsultant's or Subcontractor's actual invoiced amount times a factor of 1.20. The 1.20 factor includes DIXON's overhead and profit associated with DIXON's responsibility for the administration of such services.
- E. Not every Method of Rate Calculation may be used in this or any Contract, but every contract may be amended by using Exhibit K. If additional Work proposed in Exhibit K involves a different Method of Rate Calculation, it will be clearly defined herein.

**C1.03 Definitions including Limitations:**

- A. Basic Services to be performed are identified as Basic Services in Exhibit A, or by reference, in the General Conditions (GC-700-18) of the Owner/Contractor Construction Documents. Basic Services are generally calculated using the SHR method. These services are contracted services and thus are prior authorized.
- B. RPR Services contractually agreed services per Exhibit A or by reference, in the General Conditions (GC-700-18) of the Owner/Contractor Construction Document RPR services. These services are primarily observation during the Construction phase. RPR Services are generally calculated using the SHR method for Full Time or Daily services and by Unit Price for Hold Point Observations. Often a Contract for RPR services involves a combination of the SHR and the Unit Price method. These are contracted services and thus are prior authorized.
- C. Contingent Services some services are Basic to every contract such as Preconstruction Meeting and review of Final Pay Request. Other Basic Services and the Project Manager's time associated with them are unknown. Some services are not used on all projects, such as review of multiple Pay Requests, Change Orders, Field Orders, and Work Change Directives. These are services which may or may not be needed, and thus Contingent. Contingent Services are generally calculated using the SHR method but may be Lump Sum or Unit Price method. These are contracted services and thus are prior authorized.
- D. Additional Services are services outside of the Scope of Services as defined in Exhibit A. These are NOT contracted services and prior authorization in the form of Exhibit K- Addendum to Agreement is required. The calculation of fees is Work dependent and may be calculated by the SHR method, or Lump Sum or Unit Price.

**C1.04 Fees:**

- A. Contracted Fees are detailed in this Exhibit C Attachment 1.
- B. Contingency Allowance Fees if identified or requested, are intended to allow the flexibility to continue the Project and Services, without the need for an Addendum for additional fees. Contingent Fees may be transferred within the Project Phase or transferred to other project Phases as needed. Transfer does not require prior authorization. It is intended that any fees in this Contingency be used when other accounts are exhausted or minor Additional Services are required. Contingency fees unused will not be invoiced. Basic and/or RPR Fees may be increased to accomplish the same benefits of a Contingency Allowance.
- C. Set-Off Fees contractual Set-off: (Applies to Construction and Post Construction Phases only) as defined in the Technical Specifications and General Conditions of the Owner/Contractor Contract,

is a Contractually agreed remedy for small violations or nonadherence of the Contract terms which result in extra or unnecessary expenses to the Owner. The cost for these unnecessary expenses are not foreseen and cannot be calculated. They are the same SHR or Unit Price method, that had the service been necessary would have been invoiced to Owner. These services generally do not require prior approval of Owner, because they are required in the administration of the Contract. Set-off fees are invoiced to the Owner, who pays DIXON. The Owner can then Set-off these charges from amounts owed to the Contractor.

1. A few examples of Set-off Fees are when the Owner has incurred extra charges or engineering costs related to:
  - a. Excessive submittal review,
  - b. Excessive evaluations of proposed substitutes,
  - c. Tests and inspections, or return Hold Point Observations to complete Field Work that were determined to be a failed inspection and,
  - d. Work is defective, require correction or replacement including additional inspection costs.
2. Set-off is only used during the Construction and Post Construction Phases where additional Observation or engineering services are required to correct failed Work.

**C1.05 Estimated Fee:**

- A. The SHR Method of Rate Calculation is an estimate. The SHR Method is prepared based on extensive experience and is intended to be conservative.
  1. Calculating SHR includes, DIXON's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to DIXON under the agreement.
  2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to DIXON that the total compensation amount thus estimated will be exceeded, DIXON shall give Owner notice thereof, allowing Owner to consider its options, including suspension or termination of DIXON's services for Owner's Convenience. Upon notice, Owner and DIXON promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate DIXON's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by DIXON, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend DIXON's services during the negotiations and DIXON exceeds the estimated amount before Owner and DIXON have agreed to an increase in the compensation due DIXON or a reduction in the remaining services, then DIXON shall be paid for all services rendered hereunder.
  3. The requirements of minimum work hours and weeks shall remain in effect through negotiations and the minimum requirements of these paragraphs are not negotiable. An RPR is a professional, and if he remains on Site, he is guaranteed the minimum number of hours. Negotiations may Full Time or Daily RPR to Hold Point Observation Services or reduce the number of Daily Inspections. Then minimum hour requirements apply only to demobilization if RPR was Full Time.

**C1.06 DIXON's Reimbursable Expenses Schedule and Standard Hourly and Overtime Rates:**

- A. Attached to this EXHIBIT C is Attachment C-2, Standard Hourly Rate and Reimbursable Expense Schedule
- B. Annual Cost Adjustment – January 1 each year.
  1. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually as of the first January 1 date past expiration date printed on Attachment C-2 to reflect equitable changes in the compensation payable to DIXON. Proposals sent after August 1<sup>st</sup> will have Attachment C-2 with effective rates through December 31 of the subsequent year.

2. Unit Price for Hold Point observations and Lump Sum items shall be increased at the same time as hourly rate by the same percentage increase as Standard Hourly Rates.
3. Notification of these cost adjustments, or the issuance of an Addendum or Change Order are not required, but DIXON shall endeavor to so advise. Failure to supply notification does not waive the right for implementing rate increases.

**PART 2 INVOICING AND PAYMENT for Services in EXHIBIT A per EXHIBIT C-1:**

- A. Preparation and Submittal of Invoices: DIXON will prepare invoices in accordance with its standard invoicing practices and the terms of this EXHIBIT C and Attachments C-1 and C-2. DIXON will submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. Small monthly invoices may be held by DIXON only, for a month or more and combined.
- B. Application to Interest and Principal: Payment will be credited first to any interest owed to DIXON and then to principal.
- C. Failure to Pay: If Owner fails to make any payment due DIXON for services and expenses within 30 days after receipt of DIXON's invoice, then:
  - A. Amounts due DIXON will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said 30<sup>th</sup> day.
- D. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise DIXON in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

**PART 3 SELECTION OF RPR SERVICES**

**C3.01 Hold Point Observations:**

- A. The RPR travels to site complete the observation and travels back to Base Office. On site time at a minimum is time to complete observations and to complete report.

**SUMMARY OF DIXON’S COMPENSATION FEES SCHEDULE of VALUES**

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1. The total compensation for services under this Agreement is the estimated total compensation amount of **Twenty-Two Thousand Dollars, \$22,000** and summarized as follows:

Schedule of Values				
Description of Services	# of Units	Unit Price	Amount	Basis of Compensation
A1.01-Technical Specifications			\$5,000	Lump Sum
A1.02-Preconstruction Meeting			\$900	Unit Price
A1.02-Other Defined Basic Services: Project Administration			\$1,500	Lump Sum
A1.02-RPR Critical Phase Coating	12	\$1,050	\$12,600	Unit Price
A1.03-Warranty Observation			\$2,000	Lump Sum
Total			\$22,000	

2. In the event of a conflict with the number in the Total and the written amount in 1 above or with the number on the Signature Page, the first governance shall be a review of math in this schedule of values.
3. DIXON may alter the distribution of compensation consistent with services actually rendered between individual phases of Basic and RPR Service with unused fees calculated by any method. Reallocation of fees shall not result in a total fee in excess of the total compensation amount unless approved by the Owner.

EXHIBIT C ATTACHMENT C-2: Agreement Between  
Owner and DIXON

**STANDARD HOURLY RATE AND REIMBURSABLE EXPENSE SCHEDULE**

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<u>Labor Class</u>	<u>Per Hour</u>	<u>Overtime Rate</u>
Principal	\$255.00	
Project Manager	\$153.00	\$230.00
Engineer	\$153.00	\$230.00
CWI Welding RPR	\$138.00-\$153.00	\$207.00-\$230.00
DIXON Level 3 or NACE certified Level 3 RPR	\$107.00-\$122.00	\$161.00-\$183.00
DIXON Level 2 or NACE Level 2 RPR	\$97.00-\$122.00	\$146.00-\$183.00
DIXON Level 1 or NACE Level 1 RPR	\$87.00-\$107.00	\$131.00-\$161.00
Contract Support Staff	\$112.00-\$128.00	\$168.00-\$192.00

<u>Expenses</u>	<u>Metropolitan</u>	<u>Out-State</u>
Mileage	\$0.70/mile + tolls	\$0.60/mile
Lodging	\$145.00 per diem	\$135.00 per diem
Meals	\$47.00 per diem	\$40.00 per diem

FEES EFFECTIVE THROUGH: December 31, 2020 (Revised: 8/6/2019)

**GENERAL PROVISIONS AND RELATED CONDITIONS FROM AGREEMENT OR  
EXHIBITS**

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**GP1.00 Time for Completion:**

- A. If there is a change in the Scope of Services, or in Scope of Project, if Projects are delayed or suspended through no fault of DIXON, if the orderly and continuous progress of DIXON's services is impaired, if the agreed periods of time or dates are changed, then the time for completion of DIXON's services, and the rates and amounts of DIXON's compensation, shall be adjusted equitably. Delay of Projects by Owner or Contractor until the next season (past the expiration date of EXHIBIT C ATTACHMENT 1 and 2), is considered a Change in Scope of Services and the rates and amounts of DIXON's compensation shall be adjusted equitably in accordance with the succeeding year's EXHIBIT C ATTACHMENT 1 and 2.
- B. Owner shall give prompt written notice to DIXON whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance of DIXON's services; the presence at the Site of any Constituents of Concern; or any relevant, material defect or nonconformance in: (a) DIXON's services, (b) the Work, (c) the performance of any Contractor, or (d) Owner's performance of its responsibilities under this Agreement.
- C. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay DIXON's performance of its services.
- D. If DIXON fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

**GP1.01 Opinions of Probable Construction Cost:**

- A. DIXON's opinions (if any) of probable Construction Cost are to be made on the basis of DIXON's experience, qualifications, and general familiarity with the construction industry. However, because DIXON has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive Bidding or market conditions, DIXON cannot and does not guarantee that proposals, Bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by DIXON.

**GP1.02 Standards of Performance and Compliance with Laws and Regulations:**

- A. Standard of Care: The Standard of Care for all services performed or furnished by DIXON under this Agreement will be the care and skill ordinarily used by members of this subject profession practicing under similar circumstances at the same time and in the same locality.
- B. Technical accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of DIXON's services. DIXON shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Reliance on Others: Subject to the Standard of Care set forth above in Paragraph GP1.02. A, DIXON and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers and the publishers or technical standards.
- D. DIXON will make visits to the Site at intervals appropriate to the various stages of construction as DIXON deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, DIXON, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents.

- E. DIXON shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall DIXON have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor's furnishing and performing of its work. DIXON shall not be responsible for the acts or omissions of any Constructor or for Constructor's compliance with Laws and Regulations.
- F. DIXON makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Contractor.
- G. DIXON shall not be responsible for any decisions made regarding the construction Contract requirements, or any application, interpretation, clarification, or modification of the construction Contract documents other than those made by DIXON or its consultants.
- H. DIXON's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of the Section 975 of the Dodd-Frank Wall Street Reform and the Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements, or (4) providing legal advice or representation.

**GP1.03 Use of Documents:**

- A. All Documents are instruments of service, and DIXON shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of DIXON) whether the Project is completed or not. NOTE: A delayed project may require revisions of the Bid and/or Contract Documents.
  - 1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. DIXON grants Owner a limited license to use the Documents on the Project. Owner shall not use, reuse, or modify the Documents without written verification, completion, or adaptation by DIXON. The limited license to Owner shall not create any rights in third parties.

**GP1.04 Suspension and Termination:**

- A. Suspension:
  - 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to DIXON.
  - 2. By DIXON: DIXON may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay DIXON for invoiced services and expenses, or in response to the presence of Constituents of Concern at the Site.
- B. Termination: The obligation to provide further services under this Agreement may be terminated.
  - 1. For cause, by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - 2. By DIXON:
    - a. Upon seven days written notice if Owner demands that DIXON furnish or perform services contrary to DIXON's responsibilities as a licensed professional; or if services for the Project are delayed or suspended for more than 90 days for reasons beyond DIXON's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
    - b. DIXON shall have no liability to Owner on account of either such termination. This Agreement will not terminate; however, if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof.

3. For convenience, by Owner effective upon DIXON's receipt of notice from Owner.
- C. Effective Date of Termination: The terminating party under Paragraph GP 1.04 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow DIXON to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. Payments Upon Termination:
  1. In the event of termination by Owner or by DIXON for cause, DIXON shall be entitled, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, and other related close-out costs, using methods and rates for Additional Services as set forth in EXHIBIT C.
  2. The scheduled time period between Contract Award and the physical start of Construction, or if Construction is postponed for the off season (winter), shall not be considered a "suspension."

**GP1.05 Controlling Law and Compliance with Laws and Regulations:**

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located. DIXON and Owner shall comply with state Laws and Regulations of state of Project.
- B. DIXON shall comply with any and all instructions of Owner, and all requirements of Contractor's or Owner's safety program that are applicable to DIXON's performance of services under this Agreement and that Owner provides to DIXON in writing, prior to the Effective Date; subject to the Standard of Care set forth in Paragraph GP1.02.A above, and to the extent compliance is not inconsistent with professional practice requirements.
- C. The following may be the basis for modifications to Owner's responsibilities or to DIXON's scope of services, times of performance, or compensation:
  1. Changes after the Effective Date to Laws and Regulations;
  2. The receipt by DIXON; or changes after the Effective Date of Owner-provided written policies and procedures;
- D. The General Conditions for any construction contract documents prepared hereunder are to be EJCDC C-700-18 "Standard General Conditions of the Construction Contract" (2018 Edition), prepared by the Engineer's Joint Contract Documents Committee, and as modified by DIXON unless expressly indicated otherwise. If Owner supplied General Conditions are used, then DIXON supplied Additions shall also be used to the extent they do not conflict with Owner's.

**GP1.06 Dispute Resolution**

- A. Owner and DIXON agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking nonbinding mediation or exercising their rights at law.
- B. If negotiations fail then Owner and DIXON shall proceed to nonbinding mediation before a panel of three, one panel member selected by each party, and one mutually agreeable person. The only requirements are that neither party have any financial or relational control over any panel member. DIXON will select, based on expertise in the area of dispute. (DIXON pays fees for their panel member, Owner pays fees of their member and third member's fees are to be paid as direct by the panel, even if their final dispute resolution is not accepted).
- C. After one trial mediation, unless an additional attempt is accepted by both parties either party may exercise their rights at law.

**GP1.07 Environmental Condition of Site:**

- A. Owner represents to DIXON that as of the Effective Date to the best of Owner's knowledge, that there are no Constituents of Concern, other than those disclosed in writing to DIXON, exist at or adjacent to the Site.

- B. Constituents of Concern in the Coating Industry- DIXON and Owner acknowledge that the coating industry may generate hazardous waste or Constituents of Concern (C of C) when removing old coatings, C of C may be existing in soils from coating removal in the past, and some gasket materials contained asbestos. Old coatings may contain heavy metals such as lead, chrome, and cadmium. Hazardous solvents may be present in new coatings, thinners, or used in the cleaning of equipment. These materials may be C of C but are considered Known C of C.
- C. If DIXON Encounters or learns of an undisclosed Constituents of Concern at the Site, then DIXON shall notify Owner. State and Federal notifications, if required, are the responsibility of the Owner.
- D. Owner acknowledges that DIXON is performing professional services for Owner and that DIXON is not and shall not be required to become an “owner,” “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, as determined in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with DIXON’s activities under this Agreement

**INSURANCE AND LIABILITY CONCERNS**

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The Agreement is supplemented to include the following agreement of the parties:

**11.00 Insurance:**

- A. The limits of liability for the insurance required on this project are as follows:
- B. By DIXON:
  - 1. Workers' Compensation: Statutory
  - 2. Employer's Liability --
    - 1) Bodily injury, each accident: \$1,000,000
    - 2) Bodily injury by disease, each employee: \$1,000,000
    - 3) Bodily injury/disease, aggregate: \$1,000,000
  - 3. General Liability --
    - 1) Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
    - 2) General Aggregate \$2,000,000
  - 4. Excess or Umbrella Liability
    - 1) Per Occurrence: \$5,000,000
    - 2) General Aggregate: \$5,000,000
  - 5. Automobile Liability
    - 1) Combined Single Limit (Bodily Injury and Property Damage): \$1,000,000
  - 6. Professional Liability --
    - 1) Each Claim Made \$2,000,000
    - 2) Annual Aggregate \$2,000,000
- C. Additional Insured's: The following individuals or entities are to be listed on DIXON's general liability policies of insurance as additional insured's: Owner and other parties requested by Owner Electronic Data Transmittal Protocol within reason.
- D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and DIXON's interests in the Project. Owner shall also require Contractor to cause DIXON and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- E. DIXON shall deliver to the Owner certificates of insurance evidencing the coverages. Such certificates shall be furnished prior to commencement of DIXON's services and at renewals thereafter during the life of the Agreement.
- F. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against DIXON or its Consultants. Owner and DIXON waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner shall take appropriate measures in other Project-related contracts to secure waivers of rights.
- G. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- H. At any time, Owner may request that DIXON or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in EXHIBIT I. If so, requested by Owner, and if commercially available, DIXON

shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and EXHIBIT I will be supplemented to incorporate this requirement.

I. Definitions:

1. Owner and Party 1 is Owner and Owner's officers, directors, membership, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
2. DIXON and Party 2 is DIXON and/or DIXON's officers, directors, members, partners, agents, employees, consultants, subcontractors, or others under contract to DIXON relative to this Project or Agreement.

**11.01 Limitation of Liability:**

- A. DIXON's Liability Limited to Amount of Insurance Proceeds: DIXON shall procure and maintain insurance as required by and set forth in EXHIBIT I to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of DIXON and Party 2 to Owner and anyone claiming by, through, or under Owner shall not exceed the total insurance proceeds paid on behalf of or to DIXON by DIXON's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of DIXON's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement

**11.02 Exclusion of Special, Incidental, Indirect, and Consequential Damages:**

- A. To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement. DIXON and Party 2 shall not be liable for special, incidental, indirect, or consequential damages arising out of, or related to this Agreement or the Project, from any cause or causes, including but not limited to: damage to water supply or reduction in fire protection.

**11.03 Percentage Share of Negligence:**

- A. To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming under the other party for damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO ACCEPT A QUOTE FROM KAMMINGA & ROODVOETS, INC.  
TO PERFORM THE DISCOVERY AND VERIFICATION OF  
YARD PIPING AT THE WATER TREATMENT PLANT AND TO  
AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council accept a quote from Kamminga & Roodvoets, Inc. to perform the discovery and verification of yard piping at the Water Treatment Plant at a cost not to exceed \$40,000.00.
2. It is recommended the City Council authorize the Mayor and City Clerk to execute the contract.
3. Funds are available in the Water Treatment Plant capital improvements account number 591-591-57300-986.444.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby accept a quote from Kamminga & Roodvoets, Inc. to perform the discovery and verification of yard piping at the Water Treatment Plant.
2. The City Council does hereby authorize the Mayor and City Clerk to execute the contract.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report  
Contract  
Quote

Resolution No. \_\_\_\_\_

## STAFF REPORT

Date: October 27, 2020  
Subject: Water Plant Yard Piping Discovery & Verification  
From: Robert Veneklasen, Water Plant Superintendent  
Meeting Date: November 2, 2020

---

### **RECOMMENDATION:**

It is recommended the City Council accept the quote from Kamminga & Roodvoets, Inc. to perform the discovery and verification of the yard piping at the Water Treatment Plant at a cost of \$40,000.00. The information gleaned from this activity will predicate the broader engineering and redesign of the yard piping.

### **COMMUNITY, SAFETY, STEWARDSHIP:**

Confirming the nature and location of the yard piping structures will provide information used in its redesign. Ensuring the appropriate design of the yard piping is expected to provide safe drinking water without interruption for decades to both wholesale and residential customers.

### **DISCUSSION:**

The redesign of the water treatment plant's yard piping was recently identified as a necessary step to address the conditions that led to the recent leak on the 54" transmission main located in front of the plant. The first step in this redesign process is the discovery and verification of the existing piping and thrust restraints. These are buried assets, some of them nearing 60 years old. Positively locating and identifying them is a necessary step that must occur before the larger project of redesigning the yard piping can occur.

We solicited price quotes from the two construction firms that we believe have the capability and experience to perform installation and repairs to piping, including location verification. Quotes were solicited for "Time and Materials with Not To Exceed" costs for the specified work.

Kamminga & Roodvoets, Inc. has previously performed work on our transmission mains and most recently performed the repair of the 54" transmission main this past August. Jackson-Merkey Construction has performed work on the water mains at various locations at the water plant in the past and has similar work experience and capabilities. The quotes provided are as follows:

Jackson-Merkey Const:	Declined to bid due to previous commitments.
Kamminga & Roodvoets, Inc.:	\$40,000.00

### **BUDGET IMPACT:**

This discovery and verification of the piping was anticipated to be a probable activity during the evaluation and selection of the engineering design firms for the yard piping project. Adequate funds were included in the engineering design contingency included with the City Council action for the yard piping project. This work will be charged to the Water Treatment Plant capital improvements account number 591-591-57300-986.444.

CITY OF  
**Wyoming**  
MICHIGAN

**CITY STANDARD CONTRACT**  
**CITY OF WYOMING, MICHIGAN**  
**(MORE THAN \$8,500)**

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

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

"Effective Date" means: October 19, 2020.

"Items" means the parts, equipment or other items or services the City is purchasing from the Contractor as itemized in the Proposal.

"Proposal" means the Contractor's proposal attached as Exhibit B.

"Standard Terms and Conditions" means the attached single page Exhibit A entitled "City Contract Standard Terms and Conditions."

"Contractor" means: Kamminga & Roodvoets, Inc.  
[Name of contracting entity]  
A Michigan Corporation  
[State and type of entity, e.g., corporation, limited liability company, etc.]  
3435 Broadmoor SE  
[Contractor's street address]  
Grand Rapids, MI 49512  
[Contractor's city, state & zip]

**TERMS AND CONDITIONS**

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

1. Contractor will supply the services and items as detailed in the Proposal.
2. The City will pay the Contractor in accordance with the Proposal.
3. Contractor represents and warrants, except for those specifically waived or modified in this paragraph Contractor is complying with and will comply with the Standard Terms and Conditions. Waived or modified conditions are as follows:

None.  
[Identify those the City Attorney has agreed may be waived or the City attorney approved modifications or write "None."]

4. This is the only agreement between the parties regarding the Purchase that is 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 Contractor.

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

CITY OF WYOMING

**Kamminga & Roodvoets, Inc.**

By: \_\_\_\_\_  
Jack A. Poll, Mayor

By: \_\_\_\_\_  
[Signature officer, director or principal of Contractor]  
**Karl Klynstra, Chief Estimator**

By: \_\_\_\_\_  
Kelli A. VandenBerg, City Clerk

[Typed/Printed Name & Title of Person Signing for Contractor]  
Date signed: October 27, 2020

Date signed: \_\_\_\_\_, 20\_\_

Approved as to form:

\_\_\_\_\_  
Scott G. Smith, City Attorney

## CITY CONTRACT STANDARD TERMS AND CONDITIONS

1. **Applicability.** These Standard Terms and Conditions (“Standard Terms”) apply to any contracts to which the City of Wyoming (the “City”) is a party (“City Contract”) unless expressly modified in writing signed by the Mayor and City Clerk or the City Manager. By signing a City Contract or below, the party contracting with the City (“Contractor”) attests it complies with and will comply with these Standard Terms.
2. **Legal Compliance.** Contractor will comply with applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court. 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. **Permits and Inspections.** Unless the City Contract or the Proposal states otherwise, Contractor will, without expense to the City, obtain all licenses and permits required to lawfully perform the work under the City Contract and furnish copies of those licenses and permits to the City before commencing work. Contractor will also ensure all inspections required by local, state, and federal agencies and codes are performed.
4. **Grant Compliance.** If state or federal grant funds have been identified to Contractor as a source of payment for any part of the project, by signing the contract, Contractor (i) represents the Contractor 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.** Contractor represents and promises that:
  - A. Contractor has and will maintain and any personnel engaged by Contractor to provide services or perform work under the City Contract have and will maintain any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan.
  - B. Neither Contractor 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 this 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 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 with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding this Contract had one or more public transactions terminated for cause or default.
  - C. If the City Contract is for a CDBG, federal and/or state funded project, Contractor and subcontractors are not listed on the US-HUD listing of debarred and suspended participants.
  - D. Contractor and any subcontractor are not on and will remain off the Federal System for Award Management list of persons and entities ineligible for federal contracts.
  - E. Neither Contractor nor any subcontractor is an “Iran linked business” under Michigan’s Iran Economic Sanctions Act, 2012 PA 517.
6. **Nondiscrimination.** Contractor and its subcontractors will not discriminate against an employee or an employment applicant in hiring, terms and conditions of employment, or employment-related matters related because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the employee’s or applicant’s ability to perform the duties of a job or position. “Sex” includes sexual orientation and gender identity or expression. “Gender identity or expression” means the perception by an individual or other person of the gender identity, appearance, behavior, or expression of the individual whether or not that gender identity, appearance, behavior, or expression is different from the gender identity, appearance, behavior, or expression traditionally associated with the sex assigned to the individual at birth. “Sexual orientation” means the term as defined by Michigan Civil Service Commission Rule 9-1. Contractor and its subcontractors will comply with applicable laws, rules, regulations regarding discrimination and inclusion (e.g., Elliott-Larsen Civil Rights Act, 1976 PA 453, Persons with Disabilities Civil Rights Act, 1976 PA 220, and those identified at the website: <https://www.eeoc.gov/>).
7. **Ethical Standards.** Contractor and its directors, members, partners, officers and employees, as well as any parent, affiliate, or subsidiary organization or subcontractor of Contractor 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 Contractor and no owner, director, officer, member, partner or key employee of any parent, affiliate, or subsidiary organization or subcontractor 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. Contractor will immediately notify the City of any change in this circumstance.
8. **Media Releases.** Media releases (including promotional literature and commercial advertisements) pertaining to the City Contract or 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.** Before beginning work, Contractor and subcontractors will return by e-mail to [accountspayable@wyomingmi.gov](mailto:accountspayable@wyomingmi.gov) a completed an IRS W-9 form).
10. **Intellectual Property.** Contractor guarantees the sale or use of articles, software, copies, records or other intellectual property provided or used to perform the City Contract will not infringe any copyright, patent, trademark or other intellectual property rights. Contractor will, without expense to the City, defend all actions against the City or the City’s officers or employees for any

alleged infringement of any intellectual property rights by reason of their sale or use as part of the City Contract and will pay all costs, damages, and profits recoverable in any such action.

11. Quality. Unless otherwise stated in the Proposal, all materials and items supplied under the City Contract shall be new, the best of their respective kind and free from defects.

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 states otherwise, Contractor will remove and dispose of materials, equipment and other items demolished, removed or replaced during the work and cleanup and remove of all debris resulting from the work. Disposal will comply with applicable law and Contractor shall retain and, upon request, provide the City copies of any required manifest and other disposal documentation.

14. Restoration. Contractor shall restore, without expense to the City, property damaged during or as a result of work under the City Contract to a condition similar and equal to that existing before such damage. If Contractor fails to make such repairs or restoration, the City may, after 48-hours' notice to Contractor, make such repairs or restoration, and deduct costs incurred from amounts due Contractor.

15. Manufacturer Information and Warranties. Contractor will provide the City all manufacturer parts lists, assembly or maintenance information, and other documents provided by the manufacturer for items provided or installed under the City Contract, and will ensure warranties for such items are held by or assigned to the City.

16. Risk Allocation. Contractor is solely responsible for (i) means and methods of the work provided under the City Contract, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) injuries or property damage occurring as a result of its work under the City Contract. Contractor will hold the City and the City's officers and employees harmless from, indemnify them for, 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 Contractor's work under the City Contract. Contractor will reimburse the City for or pay in the City's stead 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 Contractor's work under the City Contract.

17. Insurance.

COMMERCIAL GENERAL LIABILITY
Minimal Limits:
\$1,000,000 Each Occurrence
\$1,000,000 Personal & Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations
Coverage must include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors; (D) 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
Minimal Limits: \$500,000 per occurrence 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 policy to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).
ADDITIONAL INSURED
If the City Contract is for more than \$5,000, General Commercial Liability, Automobile Liability and Excess/Umbrella Liability insurance shall include an endorsement stating the following are Additional Insureds: the City and all its 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.

If the City requests, Contractor will provide to the City 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. Contractor shall retain copies of all records related to the City Contract, including, without limitation, items supplied or used in performance of the City Contract, and all work under the City Contract for at least 6 years after completion of the City Contract. Contractor shall, upon the City's request, allow inspection, auditing and copying of all retained records.

19. Assignment/Beneficiaries. Unless the City Contract states otherwise, (i) none of Contractor's rights or duties 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. Contractor is wholly independent of the City and none of Contractor's personnel shall be or be represented to be City officers or employees. Contractor is solely responsible for the acts, omissions and statements of Contractor's personnel. Contractor is solely responsible for any compensation and benefits to be provided Contractor's personnel for services or work provided under the City Contract. The City has no responsibility to supervise, compensate or insure Contractor or Contractor's personnel.

#### ACKNOWLEDGEMENT

Contractor acknowledges receiving these Standard Terms and, unless modified by the City Contract, (i) they apply to the City Contract and Contractor's work, (ii) Contractor complies and will comply with them, and (iii) the City is relying on them.

**EXHIBIT B**

# Wyoming Water Treatment Plant

## Exploratory Investigation of Existing Transmission Mains - Revised 10/19/20



KAMMINGA & ROODVOETS, INC.

3435 BROADMOOR S.E.  
GRAND RAPIDS, MI 49512

PH 616-949-0800  
FX 616-949-1894

October 19, 2020

ITEM NO.	DESCRIPTION	QUANTITY	U/M	UNIT PRICE	TOTAL AMOUNT
1	UTILITY INVESTIGATION PER ATTACHMENT 3 & EMAIL OF 10/17/20	1.00	LSUM	\$ 40,000.00	\$ 40,000.00
<b>TO BE BILLED AS TIME &amp; MATERIAL WITH A NOT TO EXCEED</b>					<b>Total \$ 40,000.00</b>

**Subcontract terms:**

Kamminga & Roodvoets, Inc. is a non-union contractor. It is our intent to pay according to the wage rate tables contained in the contract documents. The fringe component of the prevailing wages will be used for the benefit of our employees. K & R will delete any subcontract terms that reference the prime contractor's labor agreements. Kamminga & Roodvoets, Inc. assumes no liability for fringe benefits related to the prime contractor's labor agreements.

**Notes:**

Excavations in 2020 restoration 2020/2021  
Excavations and added hydroexcavation per Attachment 3 - hydroexcavations may be limited by soils  
No permits are included - Added Traffic Control Included  
Any irrigation repairs and landscaping repairs/replacements are by the Owner  
Does not include any HMA restoration - includes added removals and aggregate restoration  
Based on mutually acceptable schedule  
No portion of the quote may be deleted without prior consent.  
No Sunday or night work is included.

"Email of 10/17/20" as cited in the Kamminga & Roodvoets proposal revised 10/19/20:

Bob,

As discussed and requested yesterday, this email summarizes the scope of work anticipated for the locating of and data collection on the existing 54-inch and 42-inch pipes. The Field Work Location figure is attached for reference. The specific scope of work is the excavation and hydro-excavation work. The following information was provided to K&R to develop their pricing:

1. Work needs to be completed as soon as possible but no later than the second week of November.
2. Two trees will need to be removed. The photos of the trees and their diameters are attached.
3. Excavation
  - a. General
    - i. Dewatering may be required and should be included in the estimate
    - ii. Top of pipes are estimated to be 6 to 8 feet deep
    - iii. Excavations shall be restored with insitu material compacted to 95% modified proctor
    - iv. Curb and gutter and asphalt removal/disposal is required at the 42 inch excavation
    - v. Traffic Control required for work in New Holland
    - vi. Other utilities are present in the work area. Miss Dig notice is required
    - vii. Irrigation system is present. Save to the extent possible
    - viii. Work to be coordinated with P&N survey to document location, vertical alignment, and horizontal alignment
  - b. 54-inch Excavation
    - i. Locate between the existing trees in the yard
    - ii. Excavate pipe across two joints
    - iii. Pipe length is not known so could be 40 feet plus after locating the first joint
    - iv. Pipe restraint is unknown
    - v. Caution must be taken to not damage restraining harness if present
  - c. 42-inch Excavation
    - i. Locate at 90 bend which is on edge of parking lot
    - ii. Do not excavate behind 90 bend or thrust block
    - iii. Pipe lengths are 20 feet. Excavate minimum of 3 joints
    - iv. Major power duct bank may be present along or in work area
  - d. Hydro Excavation
    - i. Located in New Holland road and drive circle
    - ii. Do not disturb road HMA
    - iii. Do not excavate behind thrust block
    - iv. Confirm pipe material and depth, and size of thrust block
4. Restoration
  - a. Lawn areas to be reestablished using existing topsoil, plus seed fertilizer and mulch
  - b. Irrigation, if damaged, to be repairs in the spring by the City
  - c. Paved areas will be restored as gravel only
5. Work is to be a T&M NTE.

I believe that captures the discussion with K&R. Please feel free to have the bidders call me if they have questions. Thank you.

**Mark R. Prein, P.E.**

**Prein&Newhof**

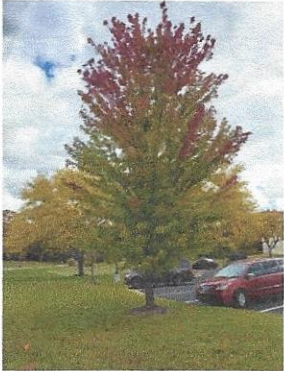
t. 616-364-8491 d. 616-432-6720

f. 616-364-6955 c. 616-485-0740

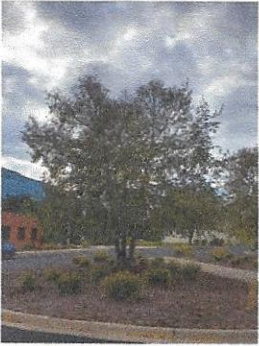
[Website](#) | [Blog](#) | [LinkedIn](#)



TREE 1



Tree 2



RESOLUTION NO. \_\_\_\_\_

RESOLUTION TO CONCUR WITH THE EMERGENCY REPAIR OF A SALT SPREADER  
AND TO AUTHORIZE PAYMENT TO WEST MICHIGAN INTERNATIONAL

WHEREAS:

1. As detailed in the attached staff report, it is recommended the City Council concur with the emergency repair of a salt spreader and authorize payment to West Michigan International in the amount of \$9,198.87.
2. Funds for the repairs are available in the fleet services repairs and maintenance account number 661-441-58200-930.000.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby concur with the emergency repair of a salt spreader and authorizes payment to West Michigan International.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Invoice

Resolution No. \_\_\_\_\_

## STAFF REPORT

DATE: October 20, 2020  
SUBJECT: Salt Spreader Engine Repair  
FROM: Ted Seil, Fleet Services Supervisor  
Date of Meeting: November 2, 2020

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### RECOMMENDATION

The Public Works Department requests that the City Council approve invoice R10102548:01 from West Michigan International in the amount of \$9,198.87 for the repair of a salt spreader engine oil leak.

### COMMUNITY, SAFETY, STEWARDSHIP:

During the summer and fall months, winter vehicle preparation occurs to ensure that City equipment is in proper condition for plowing and salting activities. While most maintenance is conducted by City staff, some repairs are sublet to the vehicle dealer as City staff do not have the diagnostic equipment or parts to perform a proper repair.

### DISCUSSION

On September 15, 2020, an International salt spreader truck was sublet to West Michigan International to repair an engine oil leak. West Michigan International found the problem to be the two worn turbo chargers, with an original repair estimate of \$7,131.89. Once the turbo chargers were removed, a crack was found in the exhaust manifold, increasing the repair cost to \$9,198.87. Expenditure of this amount requires City Council approval.

### BUDGET IMPACT

Sufficient funds have been budgeted in the Fleet Services Repairs and Maintenance Account 661-441-58200-930.000.

### ATTACHMENT

Invoice



575 56TH STREET SW  
 GRAND RAPIDS, MI 49548  
 P: (616) 241-4656  
 F: (616) 241-0813  
 Facility Lic F163699

BILL TO  
 CITY OF WYOMING - 10783  
 1155 28TH STREET SW  
 PO BOX 905  
 WYOMING MI 49509  
 P: (616) 558-6659  
 F:

DELIVER TO  
 CITY OF WYOMING - 10783  
 1155 28TH STREET SW  
 PO BOX 905  
 WYOMING MI 49509  
 P: (616) 558-6659  
 F:

**SERVICE INVOICE: R101025481:01**

DATE ARRIVED	DATE INVOICE	SALES TYPE	ADVISOR	TERMS	CUSTOMER REFERENCE				
9/15/2020 11:19:21AM	10/16/2020	SRET	Michael Phillip	AR	502-001				
YEAR	MAKE	MODEL	VIN	Unit ID	CUST UNIT #	ENGINE HOURS	IN SERVICE	Component Serial #	ODOMETER
2011	INTERNATIONAL	7000 SERIES	1HTWCAAR3BJ392900	154132	502-001	3,817	12/3/2010		63088

**Sold Operations**

**JOB #1 12 ENGINE**

COMPLAINT LEAKING OIL

CAUSE

CORRECTION

brought in and looked over found oil running down from behind turbo and over egr cooler. removed cac piping and inspected no excess oil in cac checked turbos and they weren't loose or all oily. found road draft tube had the bolt missing that had it in the valve cover and could see oil coming from there and trailing down between manifold sections. replaced o ring in road draft tube and installed new bolt. cleaned off excess oil with brake clean then took out back and steam cleaned. put fender back on. needs test drive and recheck. also pulled hr and checked codes. had an old on for exh back psi out of range. cleared will recheck after test drive.411

Pulled the turbos of the truck. Split the turbos and found the lower turbo is passing oil. The upper turbo has movement and recommend replacing. The dosser pipe also needs to be replaced the mounting bolt threads are pulled out.

removed egr cooler and removed and replaced the exhaust manifold. had 2 bolts break off when removing. got those bolts extracted and assembled new manifold with fey rings. installed manifold and torqued to spec. installed heat shields had to replace the rear heat shield because it fell apart when removing. reinstalled the egr cooler just have to finish with the cross over tube then the turbos can be installed.411

installed new turbos hooked up all exhaust components. installed air breather and fenders filled with coolant and ran checked for leaks none. running regen, road tested, ok.

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
1	101D/BDT11101	ELBOW 90	1.68	1.68
6	101D/BDTC24707	CABLE TI	0.65	3.90
1	101D/BDTKP79031DO	DOT MALE	4.26	4.26
3	101D/BDTPF00040	PKR PTC DOT UNION -4 TUBE X -4	8.26	24.78
1	101D/BDTPF00047	PKR PTC DOT UNI TEE -4 X -4 X	15.31	15.31
2	101D/FLTANCBC14Kf	BRAKE CLEAN NON CHLORINATED	2.87	5.74
1	101D/PTX24240	SEALANT THREADLOCKER BLUE 36ML	22.19	22.19
1	101N/1817817C1	BOLT M6-1.0 X 20MM HEX FLANGE	2.89	2.89
2	101N/1817852C1	BOLT M12X1.75X40MM HEX FLANGE	1.38	2.76
2	101N/1832024C1	STUD TURBO ADAPTER	6.40	12.80
3	101N/1841574C2	NUT FLANGE M10 X 1.25 SPL THD	12.06	36.18
5	101N/1845040C1	STUD TURBO ADAPTER	7.94	39.70
1	101N/1855127C1	RING O SIZE 214	5.72	5.72



**Sold Operations (Cont.)**

QTY	ITEM	DESCRIPTION	UNIT PRICE	EXTD PRICE
1	101N/1883076C1	TUBE ASSY EBP SENSOR	43.80	43.80
1	101N/1883181C1	GASKET TURBO MOUNTING	19.44	19.44
1	101N/1883182C1	GASKET TURBO OUTLET	18.68	18.68
1	101N/1884056C1	SHIELD TURBO HEAT	100.02	100.02
1	101N/1885590C93	TUBE ASSY, TURBO OIL SUPPLY	153.40	153.40
1	101N/1888560C1	SENSOR EXHAUST GAS TEMP 850C	70.70	70.70
8	101N/1889985C1	SPACER EXHAUST MANIFOLD BOLT	9.79	78.32
1	101N/1893794C1	CLAMP EXHAUST PIPE CLAMP TUR	38.57	38.57
1	101N/1893799C1	NUT HEX LOCK 1/4-28	11.90	11.90
1	101N/1899132C1	BOLT SOCKET HEAD M5 X 16MM	1.46	1.46
2	101N/2015983C1	GASKET EXH PIPE FLANGE	31.04	62.08
2	101N/3006707C1	BOLT HEX FLANGE M8 X 45 B16	8.87	17.74
1	101N/3018016C2	GASKET, HC INJ	34.80	34.80
1	101N/3869550C1	CLAMP EXHAUST PIPE V-BAND W/Q	38.77	38.77
1	101N/3900706C1	GASKET EXH PIPE FLANGE 4 IN J	18.48	18.48
4	101N/417196C3	TUBE NYLON BULK 1/4 OD BLACK	2.11	8.44
1	101N/5010930R91	KIT, REMAN TURBO HP STD I334	2,294.46	2,294.46
-1	101N/5010930R91-COI	TURBO,KIT, REMANUFACTURED TURB	450.00	-450.00
1	101N/5010930R91-COI	TURBO,KIT, REMANUFACTURED TURB	450.00	450.00
1	101N/5010934R91	KIT, REMANUFACTURED TURBO	1,940.01	1,940.01
-1	101N/5010934R91-COI	TURBO,KIT, REMANUFACTURED TURB	300.00	-300.00
1	101N/5010934R91-COI	TURBO,KIT, REMANUFACTURED TURB	300.00	300.00
1	101N/6117238C1	GASKET,EXH PIPE FLANGE , 3.5 I	18.71	18.71
1	101N/7078617C1	TUBE ASSY INJECTOR COOLER INLT	70.49	70.49
1	101N/7078618C1	TUBE ASSY INJECTOR COOLER OUTL	75.47	75.47
1	101N/7092501C95	KIT,EXHAUST MNFLD FRONT & REAR	1,389.05	1,389.05
1	101N/7094443C1	SHIELD, HEAT EXHAUST MANIFOLD	87.47	87.47
1	101N/7095683C92	MODULE,BRAKE, ASSY EXH OVER RA	1,040.01	1,040.01
-1	101N/7095683C92-COI	MODULE,BRAKE, ASSY EXH OVER RA	100.00	-100.00
1	101N/7095683C92-COI	MODULE,BRAKE, ASSY EXH OVER RA	100.00	100.00
1	101N/7096184C1	PLUG, M20	3.25	3.25
1	101X/7353959	HEAT TAPE	45.44	45.44
2.00	LABOR 12-10	ENGINE DIAGNOSIS AND OIL LEAK INSPECTION		260.00
	212 - Lenon, Todd - M233532			
6.00	LABOR 12-20	REPLACE EXHAUST MANIFOLD		480.00
	411 - Goodfellow, Michael - M246654			
7.00	LABOR 12-20	REPLACE TURBOS AND DOSER PIPE		560.00
	411 - Goodfellow, Michael - M246654			

Parts: \$7,858.87 Labor: \$1,300.00 Misc: \$0 Sublet: \$0 **\$9,158.87**

**Sold Operations Totals**

**Parts: \$7,858.87 Labor: \$1,300.00 Misc: \$0.00 Sublet: \$0.00 **\$9,158.87****



SERVICE INVOICE: R101025481:01  
 ESTIMATE: 2980246v0

<b>CUSTOMER APPROVAL FOR REPAIRS NOT COVERED BY WARRANTY, POLICY, OR FIELD CHANGES</b>		<b>STATEMENT OF DISCLAIMER</b>	ESTIMATED	BILLED
FINANCE CHARGES WILL APPLY IF THE NEW BALANCE IS UNPAID ONE MONTH FROM CLOSING DATE OF STATEMENT. FINANCE CHARGE IS COMPUTED BY A PERIODIC RATE OF 2% PER MONTH WHICH IS AN ANNUAL PERCENTAGE RATE OF 24% APPLIED TO THE PREVIOUS.			LABOR	\$1,300.00
<b>TERMS: STRICTLY CASH UNLESS ARRANGEMENTS MADE</b>			PARTS	\$7,858.87
I HEREBY AUTHORIZE THE REPAIR WORK HERIN SET FORTH TO BE DONE ALONG WITH THE NECESSARY MATERIALS AND AGREE THAT YOU ARE NOT RESPONSIBLE FOR LOSS OR DAMAGE TO VEHICLE OR ARTICLES LEFT IN VEHICLE IN CASE OF FIRE, THEFT OR ANY OTHER CAUSE BEYOND YOUR CONTROL OR FOR ANY DELAYS CAUSE BY UNAVAILABILITY OF PARTS OR DELAY IN PARTS SHIPMENTS BY THE SUPPLIER OR TRANSPORTER. I HEREBY GRANT YOU AND/OR YOUR EMPLOYEES PERMISSION TO OPERATE THE VEHICLE HEREIN DESCRIBED ON THE STREETS, HIGHWAYS, OR ELSEWHERE FOR THE PURPOSE OF TESTING AN/OR INSPECTION. AN EXPRESS GARAGE KEEPER'S LIEN IS HEREBY ACKNOWLEDGED ON THIS VEHICLE TO SECURE THE AMOUNT OF REPAIRS THERETO. I UNDERSTAND THAT PURSUANT TO SAID EXPRESS GARAGE KEEPER'S LIEN, I HAVE NO RIGHT OF POSSESSION TO THE ABOVE VEHICLE UNTIL THE REPAIRS THERETO HAVE BEEN PAID IN FULL OR UNTIL YOU AND/OR YOUR EMPLOYEES HAVE RELEASED THE VEHICLE TO ME.		THE FACTORY WARRANTY CONSTITUTES ALL OF THE WARRANTIES WITH RESPECT TO THE SALE OF THIS ITEM/ITEMS. THE SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THIS ITEM/ITEMS.	MISC	\$0.00
ALL PARTS INSTALLED ARE NEW UNLESS SPECIFIED OTHERWISE			SUBLET	\$0.00
Any wheels removed during service must be re-torqued after the first 50-100 miles of operation			<b>SUBTOTAL</b>	<b>\$9,158.87</b>
AUTHORIZED BY _____		-CERTIFICATION - All repairs and parts listed were furnished in compliance with Michigan Auto Repair Act (P.A.300).  _____ Company Authorized Representative	SHOP SUPPLIES	\$40.00
DATE _____			DISP FEES	\$0.00
			TAX	\$0.00
			<b>TOTAL</b>	<b>\$9,198.87</b>
		<b>PLEASE REMIT PAYMENT TO:</b> <b>WEST MICHIGAN INTERNATIONAL</b> <b>LLC</b> <b>575 56TH STREET SW</b> <b>GRAND RAPIDS, MI 49548</b>		

RESOLUTION NO. \_\_\_\_\_

RESOLUTION FOR AWARD OF BID

WHEREAS:

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

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby award the bid for the listed item as recommended in the attached staff report and summarized below.

Item	Recommended Bidder	Cost
Automotive Body Repair	Auto Body Xperts	Bid prices as shown on the attached staff report.

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 November 2, 2020.

\_\_\_\_\_  
Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:

Staff Report

Resolution No. \_\_\_\_\_

## STAFF REPORT

DATE: October 20, 2020

SUBJECT: Bid Award – Automotive Body Repair

FROM: Ted Seil, Fleet Services Supervisor

Date of Meeting: November 2, 2020

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### RECOMMENDATION

It is recommended that the City Council award the bid for Automotive Body Repair through December 1, 2021 to the lowest bidder, Auto Body Xperts, for the hourly rates as noted in the bid tabulation.

### COMMUNITY, SAFETY, STEWARDSHIP:

Proper repair of City vehicles is necessary to ensure that City functions can be performed in an effective and safe manner. The Fleet Services Division does not have the required expertise, equipment or materials to safely perform automotive body repair, requiring that this portion of vehicle maintenance be performed outside the organization.

### DISCUSSION

On October 20, 2020 the City Clerk received three bids for automotive body repair, out of 87 invitations to bid that were sent out.

The City of Wyoming operates a fleet of approximately 300 vehicles. The vehicles range from mowers to fire trucks. Occasionally one of the vehicles is involved in an accident. The damage sustained by the vehicles needs to be repaired. Accident damage typically requires unique skills, special tools and strict environmental regulation adherence. Because of the limited number of automotive body repairs, it is typically more economical to contract automotive body repair to an outside contractor.

Auto Body Xperts submitted the lowest bid. It is recommended the bid be awarded to Auto Body Xperts for body shop repairs for the hourly rates as noted in the bid tabulation.

### BUDGET IMPACT

Sufficient funds have been budgeted in the Motor Pool, Equipment Operations, Repairs and Maintenance account number 661-441-58200-930.000.

### ATTACHMENTS

Bid Tabulation  
Contract

CITY OF WYOMING  
 TABULATION OF BIDS  
 AUTO BODY REPAIRS

Opened by City Clerk On October 20, 2020 at 11:00 a.m. o'clock

**All bid prices reduced to net.**

CITY OF WYOMING	Rate Per Hour								
Bidder:	Auto Body Xperts			Betten Baker Chevrolet Buick			Tony Betten & Sons Ford		
Type of Vehicle:	Body Labor	Paint Labor	Paint Material	Body Labor	Paint Labor	Paint Material	Body Labor	Paint Labor	Paint Material
Cars	\$ 34.00	\$ 34.00	\$ 25.00	\$42.00	\$ 42.00	\$ 32.00	\$52.00	\$52.00	\$32.00
Police Cars	\$ 34.00	\$ 34.00	\$ 25.00	\$42.00	\$ 42.00	\$ 32.00	\$52.00	\$52.00	\$32.00
Vans	\$ 34.00	\$ 34.00	\$ 25.00	\$42.00	\$ 42.00	\$ 32.00	\$52.00	\$52.00	\$32.00
Light Duty Trucks	\$ 34.00	\$ 34.00	\$ 25.00				\$52.00	\$52.00	\$32.00
Medium Duty Trucks	\$ 34.00	\$ 34.00	\$ 25.00				\$52.00	\$52.00	\$32.00
Heavy Duty Trucks	\$ 34.00	\$ 34.00	\$ 25.00				\$54.00	\$54.00	\$34.00

ORDINANCE NO. 17-20

ORDINANCE TO AMEND CHAPTER 14 OF THE CODE OF ORDINANCES BY  
ADDING ARTICLE XIII TO REGULATE MOBILE FOOD VENDOR BUSINESSES IN  
THE CITY AND PROVIDE PENALTIES FOR VIOLATIONS OF THAT ARTICLE

THE CITY OF WYOMING ORDAINS:

Section 1. That Chapter 14 of the Code of Ordinances, City of Wyoming, Michigan, is amended by adding Article XIII to read as follows:

**ARTICLE XIII – MOBILE FOOD VENDORS**

**Sec. 14-131. – Purpose of article.**

This article is intended to (i) expand convenient and varied eating opportunities in the city, (ii) support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city, and (iii) to protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

**Sec. 14-132. – Mobile food vendor defined.**

A mobile food vendor is a business using a self-contained, fully enclosed motorized vehicle from which food and/or beverages are sold, including attached trailers for smokers or grills, designed to be portable and not permanently attached to the ground that does not provide any inside seating for customers or members of the public.

**Sec. 14-133. – Mobile food vendor operation in the city.**

- (1) Mobile food vendors are permitted to operate in the following locations, subject to approval of a permit and compliance with all other requirements of this ordinance.
  - (a) Within paved parking lots in any FBC, B-1, B-2, B-3, I-1, I-2, or I-3 zoning district in the city;
  - (b) Within commercial areas of planned unit development zoning districts; and
  - (c) Within municipal parks during special events, as specifically authorized by the municipality.
- (2) No mobile food vendor shall operate (i) within a public street right-of-way or private street easement, (ii) on public property (except as provided in subsection (1)(c)), (iii) on undeveloped property, lots with unoccupied structures, and unpaved surfaces, or (iv.) in any residentially zoned district except at a catered event with a single party paying for the food or at a city approved special event.
- (3) No more than 3 mobile food vendors shall operate per day at any one location.
- (4) Hours of operation of a mobile food vendor shall be between 7:00 a.m. and 9:00 p.m.
- (5) No mobile food vendor may be kept on any operations site during non-operational hours.
- (6) A mobile food vendor parked at any allowed location shall not reduce the availability of the minimum number of parking spaces (exclusive of those occupied by the food vendor) required by the zoning ordinance for any other use on the lot and must ensure proper and safe parking is available for the mobile food vendor patrons.
- (7) The mobile food vendor may not operate within 200 feet from any permanent restaurant lawfully existing at the time the permit or renewal permit was issued and must be at least 200 feet from any K-12 school, and at least 50 feet from any residential zoning district.
- (8) A mobile food vendor vehicle shall not obstruct the visibility of motorists, nor obstruct parking lot circulation or block access to a public street, alley, fire hydrant, or sidewalk.

(9) Food preparation shall not occur outside of the mobile food vendor vehicle, except for the use of a grill or smoker attached to the mobile food vendor vehicle. Condiments may be placed on a shelf attached to the vehicle.

(10) No mobile food vendor shall make or cause to be made any noise violating the city's noise ordinance. Any music or verbalized information must not be heard outside of 30 feet from the truck.

(11) Attached extendable canopies exceeding 3 feet and external structures are prohibited. Mobile food vendors shall not use stakes, rods, or any method of support that is required to be drilled, driven, or otherwise fixed, in asphalt pavement, curbs, sidewalks or buildings;

(12) Outdoor seating may be permitted but shall not exceed two tables without written authorization from the city planner.

(13) Only those signs permanently affixed to or painted on the vehicle shall be permitted. Signs shall not project from the vehicle.

(14) No flashing, blinking or strobe lights are allowed when the mobile food vendor vehicle is parked and in operation. All exterior lights more than 60 watts shall contain opaque hood shields to direct illumination downward.

(15) Operators must supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the mobile vending operation. Operators shall be responsible for the storage and daily disposal of all trash, refuse, and litter.

(16) Operators must prevent any liquid wastes used in the operation, except for clean ice melt, from being discharged or released from the vehicle or elsewhere in connection with the operation. Spills of food or food by-products shall be cleaned up. No gray water may be disposed of on the street or in any parks (including any park drains or restrooms) or in any storm drains. Vendors shall take appropriate precautions to prevent spills or other damages to the public property, including park land, sidewalks and streets. Vendors must pay to repair any damage to public property and for any cleaning of public property that is needed as a result of their operation.

**Sec. 14-134. – City license required.**

No individual or entity shall operate as a mobile food vendor in the city without a mobile food vendor license issued by the city, a general business license issued by the city, and with any other license that may be required by the city or any other governmental official, agency or entity.

**Sec. 14-135. – License application.**

Any individual or entity desiring a mobile food vendor license shall file an application, license fee, and related materials with the city planner on forms provided by the city planner. The application shall include (i) the applicant's name, address, and telephone number, (ii) the name, address, telephone number, cell phone number, and e-mail address of the principal contact(s) for the applicant, (iii) and a description including the manufacturer, model, color, vehicle identification or serial number, license plate number, and dimensions of each vehicle the applicant may use operating as a mobile food vendor in the city.

(a) The application shall be accompanied by a license fee in an amount established by resolution of the city council. The amount of the fee may be based on the number of vehicles that may be used for mobile food vending in the city.

(b) The application shall include a general description of the food (including beverage) products offer for sale, including the menu.

(c) The application shall be accompanied by copies of all necessary license or permits issued by the Kent County Health Department and any state agency or officer.

(d) The application shall be accompanied by current certificates of insurance showing the applicant has no-fault automobile and commercial general liability insurance coverage for the applicant's vehicles and business.

(e) An applicant (or, once a license is issued, a licensee) shall update the list of vehicles that may be used to provide services in the city to coincide with vehicles actually used within the city by sending written notification to the city clerk referring to the name on its city license, its city license number, and a description including the manufacturer, model, color, vehicle identification or serial number, the license plate number, and dimensions of each additional vehicle used in the city. That additional listing must also include (i) copies of certificates of insurance showing the applicant (licensee) has no-fault automobile insurance coverage for each additional vehicle and (ii) copies of all necessary license or permits issued by the Kent County Health Department and any state agency or officer for each additional vehicle.

**Sec. 14-136. – Grounds for denial, suspension, revocation or nonrenewal.**

In addition to grounds set forth elsewhere in this Code, any of the grounds state in section 14-138 are grounds for denying a license under this article or for the suspension, revocation, or nonrenewal of a license under this article after it is issued.

**Sec. 14-137. – License issuance, term and possession.**

(1) The city planner shall review the application and supporting materials to determine whether they are complete and include all required information. In the city planner's discretion, the city planner may consult with others to determine whether any grounds exist for denying issuance or renewal of a mobile food vendor license.

(2) The city planner shall seek written confirmation (i) from the city fire marshal or fire inspector that each vehicle that may be used by in the city in the mobile food vendor operation complies with applicable requirements of the applicable fire protection code, and (ii) from the city's registered building official that the noise and exhaust emitted by any generator on each vehicle that may be used by in the city in the mobile food vendor operation complies with applicable noise ordinance and other applicable legal requirements.

(3) If the city planner determines after reasonable review that an application and supporting materials for a mobile food vendor license are complete, the applicable fee(s) paid, and there are no grounds for denial or nonrenewal, the city planner shall issue the mobile food vendor license(s) specific to each vehicle that may be used in the city in a form prepared by the city planner and submit a copies to the city clerk.

(4) The license term shall expire on December 31 following its issuance unless the license is issued after November 1 of any year, in which case it shall expire on December 31 of the following calendar year.

(5) Provided the city planner determines there are no grounds for nonrenewal, a mobile food vendor license may be renewed for successive 1-year terms upon payment of the annual license fee to the city planner and filing of updated information on the application with updated supporting materials.

(6) A licensee must prominently display a copy of the license in a permanently affixed location in the food handling area of the vehicle specifically addressed by the license during operation. Vendors shall be ready to provide visual proof of the City permit and all necessary Kent County Health Department and/or State of Michigan permits at all time in addition to written authorization from the private property owner on whose parking lot the mobile food vendor will be located. That documentation must be presented, upon request, to any city police officer, fire fighter, code inspector, or other city officer or employee authorized to issue municipal civil infraction citations or traffic citations or otherwise charged with enforcing city ordinances.

**Sec. 14-138. – License denial, suspension, revocation or nonrenewal.**

If the city planner determines there are grounds for denial, suspension, revocation or nonrenewal of a mobile food vendor license as provided in this chapter, the city planner shall notify the applicant/licensee in writing addressed to the applicant/licensee's e-mail address and street address as provided in the most recent application or application update filed with the city planner by the applicant/licensee. Notice shall be given by e-mail and shall also be either personally served, delivered by postage prepaid certified mail with return receipt requested, or delivered by courier service such as FedEx, UPS or similar carrier. The notice shall (i) state the reason for denial, suspension, revocation or nonrenewal, (ii) state the date on which any suspension or revocation is to commence, (iii) state the length and other terms of any suspension (such as, for example, the need to pay taxes or fees, the need to repair or restore damaged property, or other condition of ending the suspension), and (iv) inform the applicant/licensee of the appeal procedure under section 1-29 of this Code.

**Sec. 14-139. – Violation as municipal civil infractions.**

(1) A violation of this article is a municipal civil infraction punishable by a fine of \$100.00 for first offense, a fine of \$500.00 for a second offense, and fine of \$1500.00 for any third or subsequent offense.

(2) Any city official authorized to issue municipal civil infraction citations may issue a citation under this section.

(3) Any person may file a complaint about a mobile food vendor operation with the city planner. If after providing a licensee any opportunity to respond, the city planner, after considering any response, determines the mobile food service vendor violated this article (which also includes any grounds for referred to in section 14-136), the city planner shall consult the city attorney to issue citations, or take actions to suspend, revoke or deny renewal o any license.

Section 6. That this ordinance shall take effect on \_\_\_\_\_, 2020.

I certify that this ordinance was adopted by the City of Wyoming at a regular session of the City Council held on \_\_\_\_\_, 2020.

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Kelli A. VandenBerg,  
Wyoming City Clerk

Ordinance No. 17-20

October 28, 2020

Ms. Kelli A. Vandenberg  
City Clerk  
Wyoming, MI

Subject: Proposed Zoning Ordinance Text Amendment for Mobile Food Vendors (Section 90-331) and Regulatory Ordinance Article XIII

Recommendation: To approve the subject Zoning Ordinance amendment and Regulatory Ordinance.

Dear Ms. Vandenberg,

The above referenced request was reviewed by the Wyoming Planning Commission at its regular meeting on October 20, 2020. A motion was made by Micele, supported by Arnoys, to recommend to the City Council adoption of the new *Section 90-331 Standards for Mobile Food Vendors Zoning Ordinance* text amendment. The motion passed unanimously.

A second motion was entered by Arnoys, supported by Van Duren, to recommend to the City Council adoption of Article XIII to regulate mobile food vendor businesses in the city and provide penalties for violations of that article. The motion passed unanimously.

A detailed review of the request is available in the attached Planning Commission minutes and supportive materials. Following please find some general information.

The City of Wyoming does not currently regulate mobile food vendors (commonly referred to as food trucks). The regulation of mobile food vendors is common practice and many municipalities in Kent County and Michigan have adopted ordinances to regulate this use. There has also been interest from council members, residents, and food truck operators for the city to establish regulatory guidance.

The adoption of the zoning and regulatory mobile food vendor ordinances will provide standards for the safe application of food trucks in Wyoming while also striving to:

1. Expand convenient and varied eating opportunities in the city;
2. Support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city; and



CITY COUNCIL

Sheldon DeKryger

Dan Burrill

Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

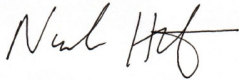
**Jack A. Poll, Mayor**

3. Protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

During the public hearing no members of the public spoke on the proposed ordinances. The Grand Rapids Chamber of Commerce did submit a letter with some recommendations.

The proposed zoning code text amendment and Article XII regulatory ordinance are attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicole Hofert". The signature is written in a cursive style with a long horizontal stroke at the end.

Nicole Hofert, City Planner  
Department of Community Services

Cc: Curtis Holt, City Manager  
Rebecca Rynbrandt, Director of Community Services

Weller stated that on page 10 of the minutes there was an error. He asked that the minutes be corrected as follows: where it references about trees planted behind the “building” it should have read trees planted behind the “berm”.

The minutes of the September 15, 2020 meeting were otherwise approved to stand as read.

### APPROVAL OF AGENDA

Hofert provided a correction to the name of the developer listed in Agenda Item #3. The developer for the project is First Companies.

The agenda was otherwise approved to stand as read.

### PUBLIC COMMENT ON NON-PUBLIC HEARING AGENDA ITEMS

There was no public comment.

### PUBLIC HEARING

#### AGENDA ITEM # 1

Request to amend Zoning Code Article 3 General Requirements by adding a new section that permits the operation of mobile food vendors in Wyoming (Wyoming Planning)

Hofert presented on the general background of the proposed amendment to Article 13 of the Zoning Code. This proposal is a request from staff to add zoning and regulatory ordinances in reference to mobile food vendors, commonly referred to as “food trucks.” Food trucks are defined as a food business using a self-contained, fully enclosed vehicle that is portable and not permanently attached to the ground and is open to the public.

Hofert stated that the City of Wyoming currently does not regulate mobile food vendors. The regulation of mobile food vendors is common practice and many municipalities in Kent County and Michigan have adopted ordinances to regulate this use.

Hofert explained that the Development Review Team had drafted the proposed ordinances in response to interest from Council members, residents, and businesses. Hofert stated that the adoption of the mobile food vendor ordinances provides standards for the safe application of food trucks in Wyoming while also striving to:

1. Expand convenient and varied eating opportunities in the city;
2. Support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city;

3. Protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

The proposal includes allowances for food trucks to be operated in a wide variety of zone districts. Food trucks will be allowed within commercial areas of designated PUDs and in municipal parks during special events in City parks with a permit.

Hofert stated that there are several limitations on the use of food trucks within the city. They are not permitted to operate in a public street right of way area or private street. Food trucks are also not permitted on undeveloped property, unpaved surfaces, or in any residentially zoned district except at a special event approved by the City.

Food trucks will only be allowed to operate from 7:00am to 9:00pm. There will be a limit of three food trucks in one location, and they must be located 200 feet away from schools and restaurants. Food trucks cannot block fire lanes or use required parking spaces. All food truck operators would need to obtain a permit and they would be required to pay a fee. In addition, Health Department and fire safety certification would be also required.

Hofert stated that the Development Review Team recommended that Planning Commission adopt the recommended Section 90-331 text amendment and recommend the same to Council. It is also recommended that Planning Commission recommend to Council adoption of Article XIII to regulate mobile food vendor businesses in the city and provide penalties for violations of that article.

Hofert stated that the City received a comment from Grand Rapids Chamber of Commerce that had been provided to Commissioners.

DeLange opened the public comment period at 7:09pm. There was no public comment and it was closed at 7:09pm.

A motion was entered by Micele, supported by Arnoys, to adopt the recommended Section 90-331 text amendment.

DeLange asked for comments and discussion from the Commissioners.

Weller asked if the proposed approval had been crafted because it had worked well for other communities and if staff had used references from other cities to draft the proposed amendment. Hofert replied that many municipalities have adopted local food ordinances so there were many examples of regulatory ordinances and zoning ordinances that staff referred to in the drafting of the amendment.

Chatterley stated that she appreciated the comments that were submitted by the Grand Rapids Chamber. She agrees with the comment that it would be beneficial to remove the limit on the number of mobile food vendors in one day at one location if there is a proper approval from

the City. This has been beneficial for other cities and would be beneficial for Wyoming as well.

Arnoys asked if the food trucks must be owned by brick and mortar restaurants within the city as he knows it is a competitive area.

Goodheart asked if Hofert could go through the reasons for limiting the number of food trucks that would be permitted in one location. Goodheart also asked if food truck operators would be required to get approval from property owners prior to operating food trucks on said property.

A vote on the motion passed unanimously.

A motion was entered by Arnoys, and supported by Van Duren, to recommend to Council adoption of Article XIII to regulate mobile food vendor businesses in the city and provide penalties for violations of that article.

Micele noted that there was a typo on Article 138 and Hofert said that this would be corrected.

Arnoys asked how the City planned to capture compensation for food truck vendors that do not have a business in Wyoming so as to not negatively impact local businesses.

Hofert replied that the ordinance does not require a potential food truck vendor to be a business owner from Wyoming, but they would have to get a business license to operate. The requirements for the establishments of food trucks away from restaurants is meant to limit the potential for any negative impact on local businesses. There have been many national studies that have concluded that food trucks operating near commercial centers tend to attract business to the other retailers in the area.

Arnoys asked if there had been any feedback on the proposal from local restaurants.

Hofert replied that the only comments that have come in have been from people that want to apply to set up food trucks within the City.

Goodheart asked that Hofert to walk through staff's thoughts on the comments received from the Grand Rapids Chamber.

Hofert stated that the first recommendation by the Chamber was to allow a food truck within 200 feet of a restaurant if the restaurant had part ownership. Hofert stated the intent of the 200-foot limit is so food trucks would not be set up permanently in a parking lot or used as a way to expand a brick and mortar business on site. The limit of three trucks in one location was put in place to maintain control of parking spaces and traffic flow in the area.

Hofert invited Director Rynbrandt to speak about the comment allowing food trucks to operate in parks.

Rynbrandt stated that the City has a policy in place to prevent profit-making activities from happening in the City parks. The City already allows for food trucks in City parks during special events as long as there is a permit secured. Food trucks would be prevented from operating during softball games or other events in the City parks.

Hofert stated some of these comments from the Chamber are better addressed by utilizing the City's Special Events ordinance and application process.

DeLange stated that a special event process already exists in the City.

Goodheart asked if the 200-foot distance requirement was measured from the restaurant building or the property line, and Hofert replied that it was measured from the property line.

Weller stated that there had been many food truck vendors during fairs or carnivals in parking lots within the City and asked if those carnival events would also be allowed to host food trucks. Hofert replied that they would be and would be subject to approval through the Special Events process.

Hall stated that he would be in support of removing the 200-foot distance requirement in order to allow for more flexibility and to help local businesses thrive during the pandemic.

Hofert replied that City staff are always looking for ways to support local businesses, but there are concerns about enforcement and the long-term implications in terms of parking, exits and entrances, and fire safety. City staff do not receive a site plan for each truck. If a business wanted a special event permit to have recurring food trucks, that would be an option as well.

Hall asked if the City could try allowing food trucks closer to restaurants and correct any issues that arise instead of just denying requests.

Hofert stated that there was an allowance issued recently for outdoor seating, and that this had been the result of a mayoral order as part of the city's civil emergency to deal with the impact of Covid. A similar measure could be taken to have the mayor issue an order which would temporarily allow food trucks to operate closer than 200 feet to an existing brick and mortar restaurant.

DeLange stated that he agreed with Hofert that allowing permanent food trucks would cause conditions to deteriorate. Ordinances are difficult to change once they are in place.

Hall stated that he would rather have businesses get citations if they are in violation than tell them they cannot do it to begin with, and that likely this extended food truck situation would only happen during the pandemic.

Hall stated that executive orders only last for three months and that these were difficult to get issued.

Arnoys asked if food trucks would be permitted to sell alcohol. Hofert replied that this would not be permitted. Arnoys asked if alcohol would be permitted if the food truck is an extension of a restaurant, and Hofert replied that she will need to research and get an answer for the Commission on this.

Hall asked if food trucks were going to be regulated by the Health Department and Hofert replied that they were.

Hegyí stated that he understands that the process existing now allows for food trucks but takes about a month of review. He asked if the proposed change replaced the process in place in order to make it quicker.

Hofert replied that food trucks are not currently regulated, and planning staff does not review any food truck applications currently. This proposed process will require the operators to complete an application and certification, and the review and issuance of the permit would be timely.

Hegyí asked if the fire department would be required to inspect each truck, and Hofert replied that all food trucks would have to get certification by a fire department. The City is part of a consortium with others, including Grand Rapids and Kentwood, and would recognize approval letters from these communities.

Hegyí asked if a food truck vendor would be required to get a permit and fire inspection each time they wanted to operate. Hofert replied that food truck certifications are good for one year and owners would be allowed to operate as many times as they would like in that year.

Hegyí asked if all food trucks would need to be certified before they can go through the permit process and Hofert replied that they would.

Goodheart asked why a food truck vendor would go through the permit process without approval from a property owner to operate their truck on said property. Hofert replied that any truck issued a permit could operate for a year and that the City would not be approving each specific site that a truck would operate in. If a truck operates on private property without approval, that would be trespassing, and the property owner would have to call the police and make a report.

DeLange asked if each location would be approved, or if there would just be citations issued for non-compliance. Hofert replied that food truck permit applications are not reviewed on a site by site basis but rather there would be enforcement activities taking place for non-compliance.

Arnoys asked how this ordinance would apply to ice cream trucks that have been operating previously.

Rynbrandt stated that ice cream trucks and other small cart vendors are authorized through a permit from the City Clerk's office and have an ordinance that regulates their use.

VanDuren asked if food trucks would be permitted in residential areas outside the special event permitting process. Hofert replied that vendors would have to follow the special event approval process in order to operate in a residential area.

Chatterley referred to Section 14.133 in Article 3 and asked if more than three food trucks would be allowed in one location if there was a special event permit approval. Hofert replied that this was the case.

A vote on the motion passed unanimously.

## AGENDA ITEM #2

Request for a special use approval for a self-storage facility at 5633 Division Ave S.  
(Section 36) (PMG Holding LLC). Includes site plan approval.

Hofert outlined the proposed project and shared the property layout map. The applicant, Division Avenue Self Storage, is asking to develop three new buildings on the parcel, which already contains eight buildings. Previously, the property was operating as a self-storage facility prior to the FBC code amendment last year. The FBC code amendment permits, as a special use approval, self-storage facilities in Corridor Edge on Division Avenue south of 56<sup>th</sup> Street SW. Since the applicant is expanding their use, they now must receive special use approval. The new structures total 16,500 sf. The project also includes a new access drive, landscaping, relocated gated entry, and other site improvements.

Hofert stated that two separate actions are required on the proposal. The first is regarding the special approval request and the second relates to review of the site plan. Hofert presented on the project's conformance with the two required sets of standards as follows:

Section 90-507(3) establishes general review standards for special approval uses:

(a) *The possible substantial and permanent adverse effect on neighboring property.*

The proposed use is not expected to cause any adverse impact on the neighboring properties as the corridor contains a variety of commercial uses on larger lots. The expansion is located centrally on the site and will blend in with the existing development.

(b) *The consistency with the spirit, purpose and intent of this chapter.*

The proposed use would be consistent with the overall purpose of the zoning ordinance, as stated in Section 90-101.

## **Section 90-331 Standards for Mobile Food Vendors**

In all Commercial and Industrial Zone Districts; commercial areas of planned unit developments; and other locations where permitted with limitations, mobile food vendors are permitted subject to compliance with the following standards:

- (1) Permits shall be valid for 12 consecutive months and shall be renewed annually.
- (2) Hours of mobile food vendor operation shall be between 7:00 a.m. and 9:00 p.m.
- (3) Operations shall only occur on paved lots and shall not reduce the area required for parking for any other use on the lot.
- (4) Operations shall be at least 200 feet from any permanent restaurant lawfully existing at the time the permit or renewal permit was issued and must be at least 200 feet from any K-12 school, and at least 50 feet from any residential zoning district.
- (5) Operations shall not obstruct the visibility of motorists, nor obstruct parking lot circulation or block access to a public street, alley, fire hydrant, or sidewalk.
- (6) Food preparation shall not occur outside of the mobile food vendor vehicle, except for the use of a grill or smoker attached to the mobile food vendor vehicle.
- (7) Signs must be permanently affixed to or painted on the mobile food unit and shall not project from the vehicle.
- (8) Operators shall be responsible for the storage and daily disposal of all trash, refuse, and litter.
- (9) No mobile food vendor unit may be stored after hours on any operations site.

ORDINANCE TO AMEND CHAPTER 14 OF THE CODE OF ORDINANCES BY ADDING ARTICLE XIII TO REGULATE MOBILE FOOD VENDOR BUSINESSES IN THE CITY AND PROVIDE PENALTIES FOR VIOLATIONS OF THAT ARTICLE.

THE CITY OF WYOMING ORDAINS:

Section 1. That Chapter 14 of the Code of Ordinances, City of Wyoming, Michigan, is amended by adding Article XIII to read as follows:

**ARTICLE XIII – MOBILE FOOD VENDORS**

**Sec. 14-131. – Purpose of article.**

This article is intended to (i) expand convenient and varied eating opportunities in the city, (ii) support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city, and (iii) to protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

**Sec. 14-132. – Mobile food vendor defined.**

A mobile food vendor is a business using a self-contained, fully enclosed motorized vehicle from which food and/or beverages are sold, including attached trailers for smokers or grills, designed to be portable and not permanently attached to the ground that does not provide any inside seating for customers or members of the public.

**Sec. 14-133. – Mobile food vendor operation in the city.**

- (1) Mobile food vendors are permitted to operate in the following locations, subject to approval of a permit and compliance with all other requirements of this ordinance.
  - (a) Within paved parking lots in any FBC, B-1, B-2, B-3, I-1, I-2, or I-3 zoning district in the city;
  - (b) Within commercial areas of planned unit development zoning districts; and
  - (c) Within municipal parks during special events, as specifically authorized by the municipality.
- (2) No mobile food vendor shall operate (i) within a public street right-of-way or private street easement, (ii) on public property (except as provided in subsection (1)(c)), (iii) on undeveloped property, lots with unoccupied structures, and unpaved surfaces, or (iv.) in any residentially zoned district except at a catered event with a single party paying for the food or at a city approved special event.
- (3) No more than 3 mobile food vendors shall operate per day at any one location.
- (4) Hours of operation of a mobile food vendor shall be between 7:00 a.m. and 9:00 p.m.
- (5) No mobile food vendor may be kept on any operations site during non-operational hours.
- (6) A mobile food vendor parked at any allowed location shall not reduce the availability of the minimum number of parking spaces (exclusive of those occupied by the food vendor) required by the zoning ordinance for any other use on the lot and must ensure proper and safe parking is available for the mobile food vendor patrons.
- (7) The mobile food vendor may not operate within 200 feet from any permanent restaurant lawfully existing at the time the permit or renewal permit was issued and must be at least 200 feet from any K-12 school, and at least 50 feet from any residential zoning district.
- (8) A mobile food vendor vehicle shall not obstruct the visibility of motorists, nor obstruct parking lot circulation or block access to a public street, alley, fire hydrant, or sidewalk.
- (9) Food preparation shall not occur outside of the mobile food vendor vehicle, except for the use of a grill or smoker attached to the mobile food vendor vehicle. Condiments may be placed on a shelf attached to the vehicle.
- (10) No mobile food vendor shall make or cause to be made any noise violating the city's noise ordinance. Any music or verbalized information must not be heard outside of 30 feet from the truck.
- (11) Attached extendable canopies exceeding 3 feet and external structures are prohibited. Mobile food vendors shall not use stakes, rods, or any method of support that is required to be drilled, driven, or otherwise fixed, in asphalt pavement, curbs, sidewalks or buildings;
- (12) Outdoor seating may be permitted but shall not exceed two tables without written authorization from the city planner.
- (13) Only those signs permanently affixed to or painted on the vehicle shall be permitted. Signs shall not project from the vehicle.

(14) No flashing, blinking or strobe lights are allowed when the mobile food vendor vehicle is parked and in operation. All exterior lights more than 60 watts shall contain opaque hood shields to direct illumination downward.

(15) Operators must supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the mobile vending operation. Operators shall be responsible for the storage and daily disposal of all trash, refuse, and litter.

(16) Operators must prevent any liquid wastes used in the operation, except for clean ice melt, from being discharged or released from the vehicle or elsewhere in connection with the operation. Spills of food or food by-products shall be cleaned up. No gray water may be disposed of on the street or in any parks (including any park drains or restrooms) or in any storm drains. Vendors shall take appropriate precautions to prevent spills or other damages to the public property, including park land, sidewalks and streets. Vendors must pay to repair any damage to public property and for any cleaning of public property that is needed as a result of their operation.

**Sec. 14-134. – City license required.**

No individual or entity shall operate as a mobile food vendor in the city without a mobile food vendor license issued by the city, a general business license issued by the city, and with any other license that may be required by the city or any other governmental official, agency or entity.

**Sec. 14-135. – License application.**

Any individual or entity desiring a mobile food vendor license shall file an application, license fee, and related materials with the city planner on forms provided by the city planner. The application shall include (i) the applicant's name, address, and telephone number, (ii) the name, address, telephone number, cell phone number, and e-mail address of the principal contact(s) for the applicant, (iii) and a description including the manufacturer, model, color, vehicle identification or serial number, license plate number, and dimensions of each vehicle the applicant may use operating as a mobile food vendor in the city.

(a) The application shall be accompanied by a license fee in an amount established by resolution of the city council. The amount of the fee may be based on the number of vehicles that may be used for mobile food vending in the city.

(b) The application shall include a general description of the food (including beverage) products offer for sale, including the menu.

(c) The application shall be accompanied by copies of all necessary license or permits issued by the Kent County Health Department and any state agency or officer.

(d) The application shall be accompanied by current certificates of insurance showing the applicant has no-fault automobile and commercial general liability insurance coverage for the applicant's vehicles and business.

(e) An applicant (or, once a license is issued, a licensee) shall update the list of vehicles that may be used to provide services in the city to coincide with vehicles actually used within the city by sending written notification to the city clerk referring to the name on its city license, its city license number, and a description including the manufacturer, model, color, vehicle identification or serial number, the license plate number, and dimensions of each additional vehicle used in the city. That additional listing must also include (i) copies of certificates of insurance showing the applicant (licensee) has no-fault automobile insurance coverage for each additional vehicle and (ii) copies of all necessary license or permits issued by the Kent County Health Department and any state agency or officer for each additional vehicle.

**Sec. 14-136. – Grounds for denial, suspension, revocation or nonrenewal.**

In addition to grounds set forth elsewhere in this Code, any of the grounds state in section 14-138 are grounds for denying a license under this article or for the suspension, revocation, or nonrenewal of a license under this article after it is issued.

**Sec. 14-137. – License issuance, term and possession.**

(1) The city planner shall review the application and supporting materials to determine whether they are complete and include all required information. In the city planner's discretion, the city planner may consult with others to determine whether any grounds exist for denying issuance or renewal of a mobile food vendor license.

(2) The city planner shall seek written confirmation (i) from the city fire marshal or fire inspector that each vehicle that may be used by in the city in the mobile food vendor operation complies with applicable requirements of the applicable fire protection code, and (ii) from the city's registered building official that the noise and exhaust emitted by any generator on each vehicle that may be used by in the city in the

mobile food vendor operation complies with applicable noise ordinance and other applicable legal requirements.

(3) If the city planner determines after reasonable review that an application and supporting materials for a mobile food vendor license are complete, the applicable fee(s) paid, and there are no grounds for denial or nonrenewal, the city planner shall issue the mobile food vendor license(s) specific to each vehicle that may be used in the city in a form prepared by the city planner and submit a copies to the city clerk.

(4) The license term shall expire on December 31 following its issuance unless the license is issued after November 1 of any year, in which case it shall expire on December 31 of the following calendar year.

(5) Provided the city planner determines there are no grounds for nonrenewal, a mobile food vendor license may be renewed for successive 1-year terms upon payment of the annual license fee to the city planner and filing of updated information on the application with updated supporting materials.

(6) A licensee must prominently display a copy of the license in a permanently affixed location in the food handling area of the vehicle specifically addressed by the license during operation. Vendors shall be ready to provide visual proof of the City permit and all necessary Kent County Health Department and/or State of Michigan permits at all time in addition to written authorization from the private property owner on whose parking lot the mobile food vendor will be located. That documentation must be presented, upon request, to any city police officer, fire fighter, code inspector, or other city officer or employee authorized to issue municipal civil infraction citations or traffic citations or otherwise charged with enforcing city ordinances.

**Sec. 14-138. – License denial, suspension, revocation or nonrenewal.**

If the city planner determines there are grounds for denial, suspension, revocation or nonrenewal of a mobile food vendor license as provided in this chapter, the city planner shall notify the applicant/licensee in writing addressed to the applicant/licensee's e-mail address and street address as provided in the most recent application or application update filed with the city planner by the applicant/licensee. Notice shall be given by e-mail and shall also be either personally served, delivered by postage prepaid certified mail with return receipt requested, or delivered by courier service such as FedEx, UPS or similar carrier. The notice shall (i) state the reason for denial, suspension, revocation or nonrenewal, (ii) state the date on which any suspension or revocation is to commence, (iii) state the length and other terms of any suspension (such as, for example, the need to pay taxes or fees, the need to repair or restore damaged property, or other condition of ending the suspension), and (iv) inform the applicant/licensee of the appeal procedure under section 1-29 of this Code.

**Sec. 14-139. – Violation as municipal civil infractions.**

(1) A violation of this article is a municipal civil infraction punishable by a fine of \$100.00 for first offense, a fine of \$500.00 for a second offense, and fine of \$1500.00 for any third or subsequent offense.

(2) Any city official authorized to issue municipal civil infraction citations may issue a citation under this section.

(3) Any person may file a complaint about a mobile food vendor operation with the city planner. If after providing a licensee any opportunity to respond, the city planner, after considering any response, determines the mobile food service vendor violated this article (which also includes any grounds for referred to in section 14-136), the city planner shall consult the city attorney to issue citations, or take actions to suspend, revoke or deny renewal o any license.

Section 6. That this ordinance shall take effect on \_\_\_\_\_, 2020.

Kelli A. VandenBerg  
Wyoming City Clerk

Ordinance No. \_\_-20

ORDINANCE NO. 18-20

ORDINANCE TO AMEND CHAPTER 90 OF THE CODE OF ORDINANCES  
BY ADDING SECTION 90-331 IN ARTICLE 3

THE CITY OF WYOMING ORDAINS:

Section 1. That Chapter 90, Article 3, Section 90-331 of the Code of Ordinances, City of Wyoming, Michigan is added to read as follows:

**Sec. 90-331 STANDARDS FOR MOBILE FOOD VENDORS**

In all Commercial and Industrial Zone Districts; commercial areas of planned unit developments; and other locations where permitted with limitations, mobile food vendors are permitted subject to compliance with the following standards:

- (1) Permits shall be valid for 12 consecutive months and shall be renewed annually.
- (2) Hours of mobile food vendor operation shall be between 7:00 a.m. and 9:00 p.m.
- (3) Operations shall only occur on paved lots and shall not reduce the area required for parking for any other use on the lot.
- (4) Operations shall be at least 200 feet from any permanent restaurant lawfully existing at the time the permit or renewal permit was issued and must be at least 200 feet from any K-12 school, and at least 50 feet from any residential zoning district.
- (5) Operations shall not obstruct the visibility of motorists, nor obstruct parking lot circulation or block access to a public street, alley, fire hydrant, or sidewalk.
- (6) Food preparation shall not occur outside of the mobile food vendor vehicle, except for the use of a grill or smoker attached to the mobile food vendor vehicle.
- (7) Signs must be permanently affixed to or painted on the mobile food unit and shall not project from the vehicle.
- (8) Operators shall be responsible for the storage and daily disposal of all trash, refuse, and litter.
- (9) No mobile food vendor unit may be stored after hours on any operations site.

Section 2. This ordinance shall take effect on \_\_\_\_\_, 2020.

I certify that this ordinance was adopted by the City of Wyoming at a regular session of the City Council held on \_\_\_\_\_, 2020.

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Kelli A. VandenBerg,  
Wyoming City Clerk

October 28, 2020

Ms. Kelli A. Vandenberg  
City Clerk  
Wyoming, MI

Subject: Proposed Zoning Ordinance Text Amendment for Mobile Food Vendors (Section 90-331) and Regulatory Ordinance Article XIII

Recommendation: To approve the subject Zoning Ordinance amendment and Regulatory Ordinance.

Dear Ms. Vandenberg,

The above referenced request was reviewed by the Wyoming Planning Commission at its regular meeting on October 20, 2020. A motion was made by Micele, supported by Arnoys, to recommend to the City Council adoption of the new *Section 90-331 Standards for Mobile Food Vendors Zoning Ordinance* text amendment. The motion passed unanimously.

A second motion was entered by Arnoys, supported by Van Duren, to recommend to the City Council adoption of Article XIII to regulate mobile food vendor businesses in the city and provide penalties for violations of that article. The motion passed unanimously.

A detailed review of the request is available in the attached Planning Commission minutes and supportive materials. Following please find some general information.

The City of Wyoming does not currently regulate mobile food vendors (commonly referred to as food trucks). The regulation of mobile food vendors is common practice and many municipalities in Kent County and Michigan have adopted ordinances to regulate this use. There has also been interest from council members, residents, and food truck operators for the city to establish regulatory guidance.

The adoption of the zoning and regulatory mobile food vendor ordinances will provide standards for the safe application of food trucks in Wyoming while also striving to:

1. Expand convenient and varied eating opportunities in the city;
2. Support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city; and



CITY COUNCIL

Sheldon DeKryger

Dan Burrill

Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

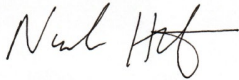
**Jack A. Poll, Mayor**

3. Protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

During the public hearing no members of the public spoke on the proposed ordinances. The Grand Rapids Chamber of Commerce did submit a letter with some recommendations.

The proposed zoning code text amendment and Article XII regulatory ordinance are attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicole Hofert". The signature is written in a cursive, flowing style.

Nicole Hofert, City Planner  
Department of Community Services

Cc: Curtis Holt, City Manager  
Rebecca Rynbrandt, Director of Community Services

Weller stated that on page 10 of the minutes there was an error. He asked that the minutes be corrected as follows: where it references about trees planted behind the “building” it should have read trees planted behind the “berm”.

The minutes of the September 15, 2020 meeting were otherwise approved to stand as read.

### APPROVAL OF AGENDA

Hofert provided a correction to the name of the developer listed in Agenda Item #3. The developer for the project is First Companies.

The agenda was otherwise approved to stand as read.

### PUBLIC COMMENT ON NON-PUBLIC HEARING AGENDA ITEMS

There was no public comment.

### PUBLIC HEARING

#### AGENDA ITEM # 1

Request to amend Zoning Code Article 3 General Requirements by adding a new section that permits the operation of mobile food vendors in Wyoming (Wyoming Planning)

Hofert presented on the general background of the proposed amendment to Article 13 of the Zoning Code. This proposal is a request from staff to add zoning and regulatory ordinances in reference to mobile food vendors, commonly referred to as “food trucks.” Food trucks are defined as a food business using a self-contained, fully enclosed vehicle that is portable and not permanently attached to the ground and is open to the public.

Hofert stated that the City of Wyoming currently does not regulate mobile food vendors. The regulation of mobile food vendors is common practice and many municipalities in Kent County and Michigan have adopted ordinances to regulate this use.

Hofert explained that the Development Review Team had drafted the proposed ordinances in response to interest from Council members, residents, and businesses. Hofert stated that the adoption of the mobile food vendor ordinances provides standards for the safe application of food trucks in Wyoming while also striving to:

1. Expand convenient and varied eating opportunities in the city;
2. Support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city;

3. Protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

The proposal includes allowances for food trucks to be operated in a wide variety of zone districts. Food trucks will be allowed within commercial areas of designated PUDs and in municipal parks during special events in City parks with a permit.

Hofert stated that there are several limitations on the use of food trucks within the city. They are not permitted to operate in a public street right of way area or private street. Food trucks are also not permitted on undeveloped property, unpaved surfaces, or in any residentially zoned district except at a special event approved by the City.

Food trucks will only be allowed to operate from 7:00am to 9:00pm. There will be a limit of three food trucks in one location, and they must be located 200 feet away from schools and restaurants. Food trucks cannot block fire lanes or use required parking spaces. All food truck operators would need to obtain a permit and they would be required to pay a fee. In addition, Health Department and fire safety certification would be also required.

Hofert stated that the Development Review Team recommended that Planning Commission adopt the recommended Section 90-331 text amendment and recommend the same to Council. It is also recommended that Planning Commission recommend to Council adoption of Article XIII to regulate mobile food vendor businesses in the city and provide penalties for violations of that article.

Hofert stated that the City received a comment from Grand Rapids Chamber of Commerce that had been provided to Commissioners.

DeLange opened the public comment period at 7:09pm. There was no public comment and it was closed at 7:09pm.

A motion was entered by Micele, supported by Arnoys, to adopt the recommended Section 90-331 text amendment.

DeLange asked for comments and discussion from the Commissioners.

Weller asked if the proposed approval had been crafted because it had worked well for other communities and if staff had used references from other cities to draft the proposed amendment. Hofert replied that many municipalities have adopted local food ordinances so there were many examples of regulatory ordinances and zoning ordinances that staff referred to in the drafting of the amendment.

Chatterley stated that she appreciated the comments that were submitted by the Grand Rapids Chamber. She agrees with the comment that it would be beneficial to remove the limit on the number of mobile food vendors in one day at one location if there is a proper approval from

the City. This has been beneficial for other cities and would be beneficial for Wyoming as well.

Arnoys asked if the food trucks must be owned by brick and mortar restaurants within the city as he knows it is a competitive area.

Goodheart asked if Hofert could go through the reasons for limiting the number of food trucks that would be permitted in one location. Goodheart also asked if food truck operators would be required to get approval from property owners prior to operating food trucks on said property.

A vote on the motion passed unanimously.

A motion was entered by Arnoys, and supported by Van Duren, to recommend to Council adoption of Article XIII to regulate mobile food vendor businesses in the city and provide penalties for violations of that article.

Micele noted that there was a typo on Article 138 and Hofert said that this would be corrected.

Arnoys asked how the City planned to capture compensation for food truck vendors that do not have a business in Wyoming so as to not negatively impact local businesses.

Hofert replied that the ordinance does not require a potential food truck vendor to be a business owner from Wyoming, but they would have to get a business license to operate. The requirements for the establishments of food trucks away from restaurants is meant to limit the potential for any negative impact on local businesses. There have been many national studies that have concluded that food trucks operating near commercial centers tend to attract business to the other retailers in the area.

Arnoys asked if there had been any feedback on the proposal from local restaurants.

Hofert replied that the only comments that have come in have been from people that want to apply to set up food trucks within the City.

Goodheart asked that Hofert to walk through staff's thoughts on the comments received from the Grand Rapids Chamber.

Hofert stated that the first recommendation by the Chamber was to allow a food truck within 200 feet of a restaurant if the restaurant had part ownership. Hofert stated the intent of the 200-foot limit is so food trucks would not be set up permanently in a parking lot or used as a way to expand a brick and mortar business on site. The limit of three trucks in one location was put in place to maintain control of parking spaces and traffic flow in the area.

Hofert invited Director Rynbrandt to speak about the comment allowing food trucks to operate in parks.

Rynbrandt stated that the City has a policy in place to prevent profit-making activities from happening in the City parks. The City already allows for food trucks in City parks during special events as long as there is a permit secured. Food trucks would be prevented from operating during softball games or other events in the City parks.

Hofert stated some of these comments from the Chamber are better addressed by utilizing the City's Special Events ordinance and application process.

DeLange stated that a special event process already exists in the City.

Goodheart asked if the 200-foot distance requirement was measured from the restaurant building or the property line, and Hofert replied that it was measured from the property line.

Weller stated that there had been many food truck vendors during fairs or carnivals in parking lots within the City and asked if those carnival events would also be allowed to host food trucks. Hofert replied that they would be and would be subject to approval through the Special Events process.

Hall stated that he would be in support of removing the 200-foot distance requirement in order to allow for more flexibility and to help local businesses thrive during the pandemic.

Hofert replied that City staff are always looking for ways to support local businesses, but there are concerns about enforcement and the long-term implications in terms of parking, exits and entrances, and fire safety. City staff do not receive a site plan for each truck. If a business wanted a special event permit to have recurring food trucks, that would be an option as well.

Hall asked if the City could try allowing food trucks closer to restaurants and correct any issues that arise instead of just denying requests.

Hofert stated that there was an allowance issued recently for outdoor seating, and that this had been the result of a mayoral order as part of the city's civil emergency to deal with the impact of Covid. A similar measure could be taken to have the mayor issue an order which would temporarily allow food trucks to operate closer than 200 feet to an existing brick and mortar restaurant.

DeLange stated that he agreed with Hofert that allowing permanent food trucks would cause conditions to deteriorate. Ordinances are difficult to change once they are in place.

Hall stated that he would rather have businesses get citations if they are in violation than tell them they cannot do it to begin with, and that likely this extended food truck situation would only happen during the pandemic.

Hall stated that executive orders only last for three months and that these were difficult to get issued.

Arnoys asked if food trucks would be permitted to sell alcohol. Hofert replied that this would not be permitted. Arnoys asked if alcohol would be permitted if the food truck is an extension of a restaurant, and Hofert replied that she will need to research and get an answer for the Commission on this.

Hall asked if food trucks were going to be regulated by the Health Department and Hofert replied that they were.

Hegyí stated that he understands that the process existing now allows for food trucks but takes about a month of review. He asked if the proposed change replaced the process in place in order to make it quicker.

Hofert replied that food trucks are not currently regulated, and planning staff does not review any food truck applications currently. This proposed process will require the operators to complete an application and certification, and the review and issuance of the permit would be timely.

Hegyí asked if the fire department would be required to inspect each truck, and Hofert replied that all food trucks would have to get certification by a fire department. The City is part of a consortium with others, including Grand Rapids and Kentwood, and would recognize approval letters from these communities.

Hegyí asked if a food truck vendor would be required to get a permit and fire inspection each time they wanted to operate. Hofert replied that food truck certifications are good for one year and owners would be allowed to operate as many times as they would like in that year.

Hegyí asked if all food trucks would need to be certified before they can go through the permit process and Hofert replied that they would.

Goodheart asked why a food truck vendor would go through the permit process without approval from a property owner to operate their truck on said property. Hofert replied that any truck issued a permit could operate for a year and that the City would not be approving each specific site that a truck would operate in. If a truck operates on private property without approval, that would be trespassing, and the property owner would have to call the police and make a report.

DeLange asked if each location would be approved, or if there would just be citations issued for non-compliance. Hofert replied that food truck permit applications are not reviewed on a site by site basis but rather there would be enforcement activities taking place for non-compliance.

Arnoys asked how this ordinance would apply to ice cream trucks that have been operating previously.

Rynbrandt stated that ice cream trucks and other small cart vendors are authorized through a permit from the City Clerk's office and have an ordinance that regulates their use.

VanDuren asked if food trucks would be permitted in residential areas outside the special event permitting process. Hofert replied that vendors would have to follow the special event approval process in order to operate in a residential area.

Chatterley referred to Section 14.133 in Article 3 and asked if more than three food trucks would be allowed in one location if there was a special event permit approval. Hofert replied that this was the case.

A vote on the motion passed unanimously.

## AGENDA ITEM #2

Request for a special use approval for a self-storage facility at 5633 Division Ave S.  
(Section 36) (PMG Holding LLC). Includes site plan approval.

Hofert outlined the proposed project and shared the property layout map. The applicant, Division Avenue Self Storage, is asking to develop three new buildings on the parcel, which already contains eight buildings. Previously, the property was operating as a self-storage facility prior to the FBC code amendment last year. The FBC code amendment permits, as a special use approval, self-storage facilities in Corridor Edge on Division Avenue south of 56<sup>th</sup> Street SW. Since the applicant is expanding their use, they now must receive special use approval. The new structures total 16,500 sf. The project also includes a new access drive, landscaping, relocated gated entry, and other site improvements.

Hofert stated that two separate actions are required on the proposal. The first is regarding the special approval request and the second relates to review of the site plan. Hofert presented on the project's conformance with the two required sets of standards as follows:

Section 90-507(3) establishes general review standards for special approval uses:

(a) *The possible substantial and permanent adverse effect on neighboring property.*

The proposed use is not expected to cause any adverse impact on the neighboring properties as the corridor contains a variety of commercial uses on larger lots. The expansion is located centrally on the site and will blend in with the existing development.

(b) *The consistency with the spirit, purpose and intent of this chapter.*

The proposed use would be consistent with the overall purpose of the zoning ordinance, as stated in Section 90-101.

## **Section 90-331 Standards for Mobile Food Vendors**

In all Commercial and Industrial Zone Districts; commercial areas of planned unit developments; and other locations where permitted with limitations, mobile food vendors are permitted subject to compliance with the following standards:

- (1) Permits shall be valid for 12 consecutive months and shall be renewed annually.
- (2) Hours of mobile food vendor operation shall be between 7:00 a.m. and 9:00 p.m.
- (3) Operations shall only occur on paved lots and shall not reduce the area required for parking for any other use on the lot.
- (4) Operations shall be at least 200 feet from any permanent restaurant lawfully existing at the time the permit or renewal permit was issued and must be at least 200 feet from any K-12 school, and at least 50 feet from any residential zoning district.
- (5) Operations shall not obstruct the visibility of motorists, nor obstruct parking lot circulation or block access to a public street, alley, fire hydrant, or sidewalk.
- (6) Food preparation shall not occur outside of the mobile food vendor vehicle, except for the use of a grill or smoker attached to the mobile food vendor vehicle.
- (7) Signs must be permanently affixed to or painted on the mobile food unit and shall not project from the vehicle.
- (8) Operators shall be responsible for the storage and daily disposal of all trash, refuse, and litter.
- (9) No mobile food vendor unit may be stored after hours on any operations site.

ORDINANCE TO AMEND CHAPTER 14 OF THE CODE OF ORDINANCES BY ADDING ARTICLE XIII TO REGULATE MOBILE FOOD VENDOR BUSINESSES IN THE CITY AND PROVIDE PENALTIES FOR VIOLATIONS OF THAT ARTICLE.

THE CITY OF WYOMING ORDAINS:

Section 1. That Chapter 14 of the Code of Ordinances, City of Wyoming, Michigan, is amended by adding Article XIII to read as follows:

**ARTICLE XIII – MOBILE FOOD VENDORS**

**Sec. 14-131. – Purpose of article.**

This article is intended to (i) expand convenient and varied eating opportunities in the city, (ii) support culinary entrepreneurship and small business development by allowing mobile food vendors to operate safely within designated areas of the city, and (iii) to protect brick and mortar businesses that have invested in the city and that pay property taxes while allowing for new businesses to enter the market.

**Sec. 14-132. – Mobile food vendor defined.**

A mobile food vendor is a business using a self-contained, fully enclosed motorized vehicle from which food and/or beverages are sold, including attached trailers for smokers or grills, designed to be portable and not permanently attached to the ground that does not provide any inside seating for customers or members of the public.

**Sec. 14-133. – Mobile food vendor operation in the city.**

- (1) Mobile food vendors are permitted to operate in the following locations, subject to approval of a permit and compliance with all other requirements of this ordinance.
  - (a) Within paved parking lots in any FBC, B-1, B-2, B-3, I-1, I-2, or I-3 zoning district in the city;
  - (b) Within commercial areas of planned unit development zoning districts; and
  - (c) Within municipal parks during special events, as specifically authorized by the municipality.
- (2) No mobile food vendor shall operate (i) within a public street right-of-way or private street easement, (ii) on public property (except as provided in subsection (1)(c)), (iii) on undeveloped property, lots with unoccupied structures, and unpaved surfaces, or (iv.) in any residentially zoned district except at a catered event with a single party paying for the food or at a city approved special event.
- (3) No more than 3 mobile food vendors shall operate per day at any one location.
- (4) Hours of operation of a mobile food vendor shall be between 7:00 a.m. and 9:00 p.m.
- (5) No mobile food vendor may be kept on any operations site during non-operational hours.
- (6) A mobile food vendor parked at any allowed location shall not reduce the availability of the minimum number of parking spaces (exclusive of those occupied by the food vendor) required by the zoning ordinance for any other use on the lot and must ensure proper and safe parking is available for the mobile food vendor patrons.
- (7) The mobile food vendor may not operate within 200 feet from any permanent restaurant lawfully existing at the time the permit or renewal permit was issued and must be at least 200 feet from any K-12 school, and at least 50 feet from any residential zoning district.
- (8) A mobile food vendor vehicle shall not obstruct the visibility of motorists, nor obstruct parking lot circulation or block access to a public street, alley, fire hydrant, or sidewalk.
- (9) Food preparation shall not occur outside of the mobile food vendor vehicle, except for the use of a grill or smoker attached to the mobile food vendor vehicle. Condiments may be placed on a shelf attached to the vehicle.
- (10) No mobile food vendor shall make or cause to be made any noise violating the city's noise ordinance. Any music or verbalized information must not be heard outside of 30 feet from the truck.
- (11) Attached extendable canopies exceeding 3 feet and external structures are prohibited. Mobile food vendors shall not use stakes, rods, or any method of support that is required to be drilled, driven, or otherwise fixed, in asphalt pavement, curbs, sidewalks or buildings;
- (12) Outdoor seating may be permitted but shall not exceed two tables without written authorization from the city planner.
- (13) Only those signs permanently affixed to or painted on the vehicle shall be permitted. Signs shall not project from the vehicle.

(14) No flashing, blinking or strobe lights are allowed when the mobile food vendor vehicle is parked and in operation. All exterior lights more than 60 watts shall contain opaque hood shields to direct illumination downward.

(15) Operators must supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the mobile vending operation. Operators shall be responsible for the storage and daily disposal of all trash, refuse, and litter.

(16) Operators must prevent any liquid wastes used in the operation, except for clean ice melt, from being discharged or released from the vehicle or elsewhere in connection with the operation. Spills of food or food by-products shall be cleaned up. No gray water may be disposed of on the street or in any parks (including any park drains or restrooms) or in any storm drains. Vendors shall take appropriate precautions to prevent spills or other damages to the public property, including park land, sidewalks and streets. Vendors must pay to repair any damage to public property and for any cleaning of public property that is needed as a result of their operation.

**Sec. 14-134. – City license required.**

No individual or entity shall operate as a mobile food vendor in the city without a mobile food vendor license issued by the city, a general business license issued by the city, and with any other license that may be required by the city or any other governmental official, agency or entity.

**Sec. 14-135. – License application.**

Any individual or entity desiring a mobile food vendor license shall file an application, license fee, and related materials with the city planner on forms provided by the city planner. The application shall include (i) the applicant's name, address, and telephone number, (ii) the name, address, telephone number, cell phone number, and e-mail address of the principal contact(s) for the applicant, (iii) and a description including the manufacturer, model, color, vehicle identification or serial number, license plate number, and dimensions of each vehicle the applicant may use operating as a mobile food vendor in the city.

(a) The application shall be accompanied by a license fee in an amount established by resolution of the city council. The amount of the fee may be based on the number of vehicles that may be used for mobile food vending in the city.

(b) The application shall include a general description of the food (including beverage) products offer for sale, including the menu.

(c) The application shall be accompanied by copies of all necessary license or permits issued by the Kent County Health Department and any state agency or officer.

(d) The application shall be accompanied by current certificates of insurance showing the applicant has no-fault automobile and commercial general liability insurance coverage for the applicant's vehicles and business.

(e) An applicant (or, once a license is issued, a licensee) shall update the list of vehicles that may be used to provide services in the city to coincide with vehicles actually used within the city by sending written notification to the city clerk referring to the name on its city license, its city license number, and a description including the manufacturer, model, color, vehicle identification or serial number, the license plate number, and dimensions of each additional vehicle used in the city. That additional listing must also include (i) copies of certificates of insurance showing the applicant (licensee) has no-fault automobile insurance coverage for each additional vehicle and (ii) copies of all necessary license or permits issued by the Kent County Health Department and any state agency or officer for each additional vehicle.

**Sec. 14-136. – Grounds for denial, suspension, revocation or nonrenewal.**

In addition to grounds set forth elsewhere in this Code, any of the grounds state in section 14-138 are grounds for denying a license under this article or for the suspension, revocation, or nonrenewal of a license under this article after it is issued.

**Sec. 14-137. – License issuance, term and possession.**

(1) The city planner shall review the application and supporting materials to determine whether they are complete and include all required information. In the city planner's discretion, the city planner may consult with others to determine whether any grounds exist for denying issuance or renewal of a mobile food vendor license.

(2) The city planner shall seek written confirmation (i) from the city fire marshal or fire inspector that each vehicle that may be used by in the city in the mobile food vendor operation complies with applicable requirements of the applicable fire protection code, and (ii) from the city's registered building official that the noise and exhaust emitted by any generator on each vehicle that may be used by in the city in the

mobile food vendor operation complies with applicable noise ordinance and other applicable legal requirements.

(3) If the city planner determines after reasonable review that an application and supporting materials for a mobile food vendor license are complete, the applicable fee(s) paid, and there are no grounds for denial or nonrenewal, the city planner shall issue the mobile food vendor license(s) specific to each vehicle that may be used in the city in a form prepared by the city planner and submit a copies to the city clerk.

(4) The license term shall expire on December 31 following its issuance unless the license is issued after November 1 of any year, in which case it shall expire on December 31 of the following calendar year.

(5) Provided the city planner determines there are no grounds for nonrenewal, a mobile food vendor license may be renewed for successive 1-year terms upon payment of the annual license fee to the city planner and filing of updated information on the application with updated supporting materials.

(6) A licensee must prominently display a copy of the license in a permanently affixed location in the food handling area of the vehicle specifically addressed by the license during operation. Vendors shall be ready to provide visual proof of the City permit and all necessary Kent County Health Department and/or State of Michigan permits at all time in addition to written authorization from the private property owner on whose parking lot the mobile food vendor will be located. That documentation must be presented, upon request, to any city police officer, fire fighter, code inspector, or other city officer or employee authorized to issue municipal civil infraction citations or traffic citations or otherwise charged with enforcing city ordinances.

**Sec. 14-138. – License denial, suspension, revocation or nonrenewal.**

If the city planner determines there are grounds for denial, suspension, revocation or nonrenewal of a mobile food vendor license as provided in this chapter, the city planner shall notify the applicant/licensee in writing addressed to the applicant/licensee's e-mail address and street address as provided in the most recent application or application update filed with the city planner by the applicant/licensee. Notice shall be given by e-mail and shall also be either personally served, delivered by postage prepaid certified mail with return receipt requested, or delivered by courier service such as FedEx, UPS or similar carrier. The notice shall (i) state the reason for denial, suspension, revocation or nonrenewal, (ii) state the date on which any suspension or revocation is to commence, (iii) state the length and other terms of any suspension (such as, for example, the need to pay taxes or fees, the need to repair or restore damaged property, or other condition of ending the suspension), and (iv) inform the applicant/licensee of the appeal procedure under section 1-29 of this Code.

**Sec. 14-139. – Violation as municipal civil infractions.**

(1) A violation of this article is a municipal civil infraction punishable by a fine of \$100.00 for first offense, a fine of \$500.00 for a second offense, and fine of \$1500.00 for any third or subsequent offense.

(2) Any city official authorized to issue municipal civil infraction citations may issue a citation under this section.

(3) Any person may file a complaint about a mobile food vendor operation with the city planner. If after providing a licensee any opportunity to respond, the city planner, after considering any response, determines the mobile food service vendor violated this article (which also includes any grounds for referred to in section 14-136), the city planner shall consult the city attorney to issue citations, or take actions to suspend, revoke or deny renewal o any license.

Section 6. That this ordinance shall take effect on \_\_\_\_\_, 2020.

Kelli A. VandenBerg  
Wyoming City Clerk

Ordinance No. \_\_-20