

**WORK SESSION AGENDA
WYOMING CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS**

Monday, August 8, 2016, 7:00 P.M.

- 1) Call to Order**
- 2) Student Recognition**
- 3) Public Comment on Agenda Items (3 minute limit per person)**
- 4) Proposed Park Capital Improvement Funding**
- 5) Replacement of Firefighting Apparatus**
- 6) Distributed Antenna System (DAS) and Storm Water Ordinances**
- 7) Any Other Matters**
- 8) Acknowledgement of Visitors/Public Comment (3 minute limit per person)**

STAFF REPORT

Date: August 4, 2016
Subject: Replacement of Firefighting Apparatus
From: Chuck Lark, Deputy Director of Fire Services
Meeting Date: August 8, 2016

RECOMMENDATION:

It is recommended that the City Council approve the purchase of two (2) Stock (Demo) fire apparatuses to replace the scheduled removal of Ladders #71 and #74. The total cost of this purchase, based on demos that are currently available, is \$1,336,353.00.

However, due to the fact that these apparatuses are demos, their availability cannot be guaranteed beyond the date of approval. Therefore, it is recommended that the council approve an amount of \$1,400,000.00 (+5% higher than the current estimate) for the purchase of the same or similar type and quality of demo apparatuses that may become available if the current demos are sold prior to approval.

It is also recommended that the City Council approve the sale of Ladders #71 and #74 as summarized in this staff report.

SUSTAINABILITY CRITERIA:

Environmental Responsibility: The purchase of this apparatus will have no impact on the environmental quality.

Social Equity: The purchase of this apparatus will ensure that our fire response vehicles are readily available to provide fire and rescue services throughout the entire community.

Economic Strength: The purchase of this apparatus will provide depth in the WYFD's firefighting capabilities and extend the life of our current fleet, at a significant reduction in costs.

DISCUSSION:

In the spring of 2016, Deputy Chief Bennett, Equipment Operator Brian Ilbrink and Fleet Services Director Ted Seil attended the FDIC Fire Conference with the specific plan of finding replacements for our 75' Ladders (Quints) 71 and 74, which have reached their service life.

Consideration was initially given to replacing these units with similar fire apparatus (Quints), but these types of trucks, once popular in the 1980's have outlived their usefulness in the world of firefighting. Through their research it was determined that the following:

- Pierce 107' Ascendant Aerial truck provided the most practical purchase of comparable equipment. The Pierce Aerial is the only ladder manufacturer that builds a ladder of that length, on a single axle frame. Their revolutionary design provides improved maneuverability while adding 7' ft. to the traditional 100' ft. ladder designs. Pierce also builds the entire truck at the Wisconsin production facility, as opposed to nearly all other fire truck manufacturers, who use other manufactures for components, and then assembles them at the facility.

STAFF REPORT

Fire Apparatus (Contd.)

- It has been our experience that companies that produce aerial devices with separate chassis/ladders can be problematic since this is typically not their expertise in design. Even the units we are replacing were assemblies from different component companies, and we have had repair issues service where one or both of the manufacturers were reluctant in fixing the problem and pointed the finger at the other manufacturer.
- With the Pierce aerial design, we will reduce annual maintenance costs due to its single axle and mechanic friendly access for preventative maintenance.

Paralleling this research, Ted Seil was also researching the auction price for the two Quints and was able to find a purchaser for both units who has offered to pay \$100,000.00 apiece. In that past, when we have auctioned over similar apparatus, we have received only a fraction of those figures. The problem is; this offer is on a tight timeline expiring at the end of this month. Challenged with this timeline and using the fleet assessment over the past year staff is recommending the following:

2016 Fleet Replacement

Ladder #71

Ladder #74

2016 Purchase Recommendation

*Pierce 107' Ascendant Aerial (Price \$800,638.00)

*DASH CF, Puc Rescue Pumper (Price \$535,715.00)

The Pierce 107' Ascendant Aerial purchase will provide a back-up to our current aerial (Platform #82) and/or frontline ladder to our fleet replacing Ladder #71. The DASH CF, Puc Rescue Pumper will provide a back-up (Rescue #77) and/or frontline rescue pumper to our fleet replacing Ladder #74. Staff is recommending purchasing from Pierce specifically because of the uniqueness of their Aerial, and the significant cost savings received because we are purchasing two Stock (Demo) vehicles. Pierce has this equipment immediately available.

This purchase will create redundancy in our fleet, and will also help improve our ISO (Insurance Services Organization) rating needs.

COST SAVINGS:

By purchasing the Stock (Demo) equipment we are estimating a minimum savings of \$200,000.00 from what we have accumulated to replace the Quints. Since we are purchasing stock (Demo) vehicles, approval will allow us to facilitate the tight sale timeline required by our purchaser for the two Quints. The combined sale of our Quints and purchasing the Stock (Demo) vehicles we are estimating a total minimum savings of \$400,000.00.

BUDGET IMPACT:

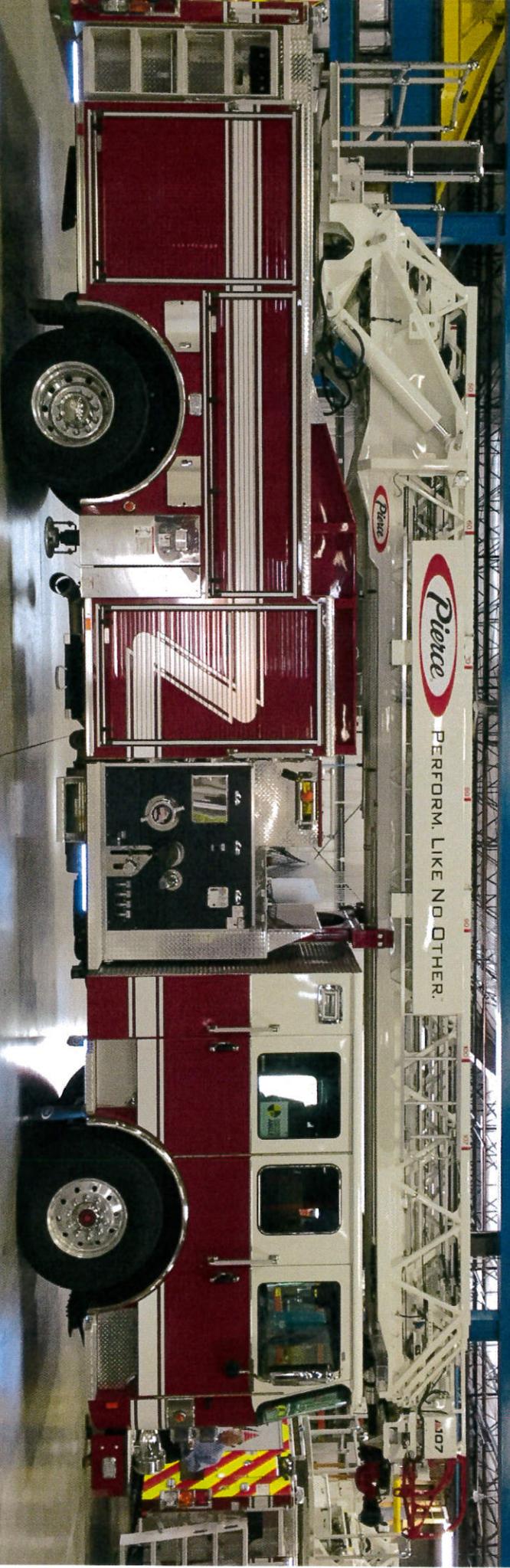
Funds are available in the amount of \$1,400,000.00 in the Motor Pool Capital Outlay fund account (#662-441-58500-985.000).

REPORT APPROVED

Chief James E. Carmody

August 4, 2016

* Photos attached.



Pierce PERFORM. LIKE NO OTHER.

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MEMORANDUM

DATE: August 3, 2016

TO: Curtis L. Holt, City Manager

FROM: William D. Dooley, Director of Public Works

SUBJECT: Distributed Antenna System (DAS) and Storm Water Ordinances

We are providing you with a copy of two draft ordinances which we would like to discuss with the City Council at their August study session. One is a new ordinance and one is a replacement for an existing ordinance. Both are the result of metro-wide cooperative efforts to address regulatory challenges with consistent ordinances.

The first is a distributed antenna system or DAS ordinance. This ordinance is in response to a new type of telecommunication system which relies on numerous pole-mounted antennas located throughout a community. The ordinance establishes a new permitting process and provides for the collection of associated fees from telecommunication companies. We will provide more detail at the study session. If the City Council agrees, this ordinance will need to be adopted without delay.

The second is an updated storm water ordinance. The current ordinance has been significantly revised in response to new storm water regulations and requirements. The Michigan Department of Environmental Quality is currently reviewing permit applications from all of the Grand Rapids metro communities. These new storm water permits, once approved by the MDEQ, will require many new changes – all of which are addressed in this updated ordinance. Once again, we will provide more detail at the study session. The City Council will not need to adopt this updated ordinance until after the MDEQ issues Wyoming's new permit – most likely in 12 to 18 months. It is important, however, that the City Council commit to adopting the updated ordinance, as its adoption will be mandated in the MDEQ permit.

ORDINANCE NO. _____

AN ORDINANCE TO ADD ARTICLE V
TO CHAPTER 77 OF THE CODE OF THE CITY OF WYOMING
ENTITLED "DAS/SMALL CELL TELECOMMUNICATION FACILITIES"

THE CITY OF WYOMING ORDAINS:

Section 1. That Article V is hereby added to Chapter 77 of the Code of the City of Wyoming to read as follows:

ARTICLE V.
DAS/SMALL CELL TELECOMMUNICATION FACILITIES

Sec. 77-220. Definition.

DAS/Small Cell or DAS/Small Cell Network means any telecommunications facilities or related equipment installed and/or operated by a licensee for the provision of telecommunication services including the fiber optic or other cables, antennas, brackets, devices, conduits, poles, shelters, houses, cabinets and all other related equipment to be deployed, installed and/or operated by a licensee as described in an agreement between the licensee and the City.

Sec. 77-221. Agreement.

A person may not install or operate, in whole or in part, a DAS/Small Cell or DAS/Small Cell Network in a public right-of-way or other public place, without having entered into a DAS/Small Cell License Agreement with the City in a form and subject to such terms and conditions acceptable to the City.

Sec. 77-222. Right-of-Way Permit.

A person may not install or operate, in whole or in part, a DAS/Small Cell Facility or a DAS/Small Cell Network in a public right-of-way or other public place, without having entered into a modified Metro Act Right-of-Way Telecommunication Permit for DAS/Small Cell System lines and facilities in accordance with the terms of the permit issued by the City.

Sec. 77-223. Compliance with Applicable Law.

The City in reviewing and authorizing the permit and agreement and the Licensee in the establishment and operation, in whole or in part, of any DAS/Small Cell System or facilities shall comply with all applicable federal and state laws.

Sec. 77-224. Fees.

Fees for the agreement and permits required shall be as provided for in those documents and as periodically authorized by resolution of the City Council.

Section 2. This ordinance shall be in full force and effect on the _____ day of _____, 2016.

I hereby certify that the above-entitled Ordinance was adopted by the City of Wyoming at a _____ session of the City Council held on the _____ day of _____, 2016.

Kelli A. Vandenberg
Wyoming City Clerk

Ordinance No. _____

DAS/SMALL CELL LICENSE AGREEMENT

BETWEEN

THE CITY/VILLAGE/TOWNSHIP OF _____

and

THIS LICENSE AGREEMENT DATED AS OF THIS ___ DAY OF _____, 201__, IS ENTERED INTO BY AND BETWEEN THE CITY/VILLAGE/TOWNSHIP OF _____, A MUNICIPAL CORPORATION (“CITY/VILLAGE/TOWNSHIP”), AND _____, A _____ (“LICENSEE”).

WHEREAS, the City/Village/Township has made significant investments of time and resources in the acquisition and maintenance of the Public Ways and such investment has enhanced the utility and value of the Public Ways; and

WHEREAS, the Public Ways within the City/Village/Township are used by and useful to private enterprises including Licensee and others engaged in providing telecommunications services to citizens, institutions, and businesses located in the City/Village/Township; and

WHEREAS, the right to access and/or occupy portions of such Public Ways for limited times, for the business of providing communications services, is a valuable economic privilege, the economic benefit of which should be shared with all taxpayers; and

WHEREAS, beneficial competition between providers of communications services can be furthered by the City/Village/Township’s provision of grants of location and rights to use the Public Ways on non-discriminatory and competitively neutral terms and conditions; and

WHEREAS, LICENSEE is a private enterprise engaged in installing facilities related to and/or providing various communications services within the City/Village/Township by means of fiber connected Distributed Antenna Systems or other Small Cell facilities (DAS/Small Cells or DAS Small Cell Networks); and

WHEREAS, LICENSEE desires to physically install and occupy portions of the Public Way to install additional poles, or to utilize City/Village/Township owned light, traffic signal or other City/Village/Township owned poles for use of its DAS/Small Cells; and

WHEREAS, LICENSEE’s private enterprise will be aided if allowed to exercise a valuable benefit by using the Public Ways in a manner not enjoyed by the general public; and

WHEREAS, LICENSEE is agreeing to compensate the City/Village/Township for installation and/or operation of all antennas, supporting structures for antennas, equipment shelters, poles or houses associated with DAS/Small Cells in exchange for a grant of location and

the right to use and physically occupy portions of the public way for the limited purposes and times set forth below; and

WHEREAS, LICENSEE has or will contemporaneously with this Agreement seek and obtain a Metro Act Permit for the transmission line portion of its DAS/Small Cells pursuant to 2002 PA 48;MCL 484.3101 et seq.; and

WHEREAS, the City/Village/Township grants this license pursuant to its authority to manage its public spaces including, without limitation, authority under the Michigan Constitution of 1963.

NOW THEREFORE BE IT RESOLVED, in consideration of the terms and conditions contained in this Agreement, the City/Village/Township and LICENSEE do hereby agree:

1.0 DEFINITIONS

Except as otherwise defined herein, the following terms shall have the meanings given below:

1.1 “Agency” means any governmental agency or quasi-governmental agency other than City/Village/Township, including, but not limited to, the Federal Communications Commission (FCC) and the Michigan Public Service Commission, Metro Authority or Local Community Stabilization Authority.

1.2 “Business Day” means any Day other than a Saturday, Sunday, or Day observed as an official holiday by the City/Village/Township.

1.3 “DAS/Small Cells” or “DAS/Small Cell Network” means any and all telecommunication facilities or related equipment installed and/or operated by LICENSEE for the provision of telecommunication services including the fiber optic or other cables, antennas, brackets, devices, conduits, poles, shelters, houses, cabinets and all other related equipment to be deployed, installed and/or operated by LICENSEE as described in Exhibit A attached hereto and any facilities that replace the same.

1.4 “Day” means any calendar day, unless a Business Day is specified. For the purposes hereof, if the time in which an act is to be performed falls on a Day other than a Business Day, the time for performance shall be extended to the following Business Day. For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last.

1.5 “FCC” means the Federal Communications Commission.

1.6 “Grant” when used with reference to grant or authorization of the City/Village/Township, means the prior written authorization of the City/Village/Township of _____ (and/or its various boards and commissions) unless another person or method for authorization is specified herein or under applicable law. Grant does not mean “Approval” as contemplated in various FCC determinations

related to subsequent co-location requests which are expressly not granted by this Agreement.

1.7 “Hazardous Material” means any substance, waste or material which, because of its quantity, concentration or physical or chemical characteristics is in fact or deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

1.8 “Law” or “Laws” means any federal, state or local statute, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other lawful requirement in effect either at the time of execution of this Agreement or at any time during the period the DAS/Small Cells are located in the Public Rights-of-Ways.

1.9 “Person” means an individual, a corporation, a partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association or government agency.

1.10 “Pole” means light poles, wooden power poles, traffic light poles, highway sign poles, utility poles, lighting fixtures or other similar poles located in the Public Way under the jurisdiction of the City/Village/Township or LICENSEE or following transfer from the City/Village/Township or other third parties and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term poles excludes any historically or architecturally significant poles owned by the City/Village/Township located on Public Ways or, other similar street features.

1.11 “Public Ways” or “Public Rights-of-Way” means the areas in, upon, above, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, boulevards, buildings and any other public places owned by and within the City/Village/Township as the same now or may hereafter exist and which are under the permitting jurisdiction of the City/Village/Township.

1.12 “Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any improvements constructed hereunder by or on behalf of LICENSEE.

1.13 “Services” means those services provided by or through DAS/Small Cells LICENSEE as specifically identified in the attached detailed plans and specifications (see Exhibit A). If the City/Village/Township grants the provision of any other services by LICENSEE, upon such grant, the definition of “Services” shall automatically be revised to include any such grant of additional services. Unless specifically expressed in this agreement, Service does not mean video service of any kind.

2.0 TERM OF AGREEMENT

The term of this Agreement shall commence on the date of execution by the City/Village/Township (“Commencement Date”) and shall end on _____. It is

intended that this Agreement be coterminous with the Metro Act Permit issued relative to this same project.

Upon written application to City/Village/Township delivered no later than one year before the end date of the term of this LICENSE, the LICENSEE may request to amend this LICENSE to extend the end date to a proposed new date. Assuming the licensee has met all conditions of the LICENSE and performed to City/Village/Township's satisfaction in providing the Services in the City/Village/Township, and assuming that City/Village/Township believes extension of the term of this license would be in the public interest, the term end date of this Agreement may be extended subject to whatever modifications of other Agreement terms and conditions the City/Village/Township may find are appropriate and in parallel with any termination and/or extension of any related Metro Act Permit(s).

3.0 DESCRIPTION OF WORK

3.1 Installation of DAS/SMALL CELL NETWORKS. During the term of this Agreement, LICENSEE is authorized, on a non-exclusive basis, to locate and install poles, light poles, or to attach to City/Village/Township light pole, traffic signal poles or other City/Village/Township owned poles to house and operate a DAS/Small Cell Network in the utility Public Ways or other City/Village/Township owned or controlled property, as more particularly identified in Exhibit A. This Agreement does not give any rights to use any poles not owned by the City/Village/Township.

3.1.1. Location of DAS/Small Cell Networks. The City/Village/Township may grant or deny the location and installation of any DAS/Small Cell Network on a pole prior to installation, based on reasonable regulatory factors, such as the location of other present or future communications facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communications facilities and services, the public safety and other critical public services; provided, however, that such grant shall not be unreasonably conditioned, withheld, or delayed.

3.1.2 Map and List of DAS/Small Cell Network. LICENSEE shall maintain in a form acceptable to the City/Village/Township, a current map and list of the location of all facilities used by LICENSEE for its DAS/Small Cell Network pursuant to this Agreement and located in Public Ways. LICENSEE shall provide such list to the City/Village/Township within ten (10) Business Days upon receipt of request for same; and LICENSEE shall, whether or not requested by the City/Village/Township, provide an updated list and map promptly after any change is made in regard to the locations of the specific poles specified by LICENSEE in such lists and maps. LICENSEE shall obtain all required permits and grants of the City/Village/Township and any of its departments or agencies, and any other Agency with jurisdiction over the DAS/Small Cells, services or the property on which the DAS/Small Cells are or will be located, prior to performing any work under this Agreement and shall comply with all of the terms and conditions set forth in these permits.

LICENSEE shall not mount, construct, install, maintain, locate, operate, place, protect, reconstruct, reinstall, remove, repair, or replace any DAS/Small Cells on any pole, except as expressly authorized by and in strict compliance with this Agreement, and shall not without further and separate authorization, otherwise locate more than one antenna or other related structure on any single pole.

3.1.3 Changes to DAS/Small Cell Networks or Their Location on Poles Located on Public Ways. If LICENSEE proposes to install different but comparable equipment, or if the DAS/Small Cell or its location on the poles located on Public Ways deviate in any material way from the specifications attached hereto as Exhibit A, then LICENSEE shall first obtain a grant for the use and installation of the comparable equipment or for any such deviation in the DAS/Small Cells Network from the owners of the poles located on Public Rights-of-Way and shall provide the City/Village/Township with written evidence of such authorization. The City/Village/Township may not unreasonably deny use of the different but comparable equipment, or non-material deviation from the specifications set forth in Exhibit A with regard to the placement of the DAS/Small Cell equipment on the poles located on Public Ways, pursuant to the factors enumerated under Section 3.1.1, and such grant shall not be unreasonably conditioned, withheld, or delayed.

3.2 Provision of Services. The DAS/Small Cell Network installed pursuant to this Agreement may be used solely for the rendering of telecommunication services. If LICENSEE proposes to make a material change to the nature or character of the services not expressly permitted under this Agreement, including, without limitation, video programming services, open video system services, or cable television services, LICENSEE shall notify the City/Village/Township in writing of this intended change not less than one hundred and eighty (180) days prior to the proposed date of change to Service. The City/Village/Township may either (i) accept the proposed change in Service on mutually agreeable terms and conditions or (ii) require that the Services not be changed but rather continue to be provided as contemplated herein.

3.3 Restoration of Work Site Areas. Upon the completion of each task or phase of work to be performed by LICENSEE under this Agreement, LICENSEE shall promptly restore all work site areas to a condition reasonably satisfactory to the City/Village/Township and in accordance with construction standards as specified by the City/Village/Township, ordinary wear and tear not caused by LICENSEE or the DAS/Small Cells Networks excepted. The provisions of this section shall survive the expiration, completion or earlier termination of this Agreement.

3.4 Removal of DAS/Small Cell Network. Upon one hundred and eighty (180) days' written notice by the City/Village/Township pursuant to the expiration or earlier termination of this Agreement for cause, LICENSEE shall promptly, safely and carefully remove the DAS/Small Cell Network from and including all poles and other places located in Public Ways. Such obligation of LICENSEE shall survive the expiration or earlier termination of this Agreement. If LICENSEE fails to complete this removal work on or before the one hundred and eighty (180) days subsequent to the

issuance of notice pursuant to this Section 3.4, then the City/Village/Township, upon written notice to LICENSEE, shall have the right at the City/Village/Township's sole election, but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including, without limitation, reasonable administrative costs. LICENSEE shall pay to the City/Village/Township the reasonable costs and expenses incurred by the City/Village/Township in performing any removal work and any storage of LICENSEE's property after removal (including any portion of the DAS/Small Cell Networks) within fifteen (15) Business Days of the date of a written demand for this payment from the City/Village/Township. The City/Village/Township may, in its discretion, obtain reimbursement for the above by making a claim under LICENSEE's performance bond. After the City/Village/Township receives the reimbursement payment from LICENSEE for the removal work performed by the City/Village/Township, the City/Village/Township shall promptly return to LICENSEE the property belonging to LICENSEE and removed by the City/Village/Township pursuant to this Section 3.4 at no liability to the City/Village/Township. If the City/Village/Township does not receive the reimbursement payment from LICENSEE within such fifteen (15) Business Days, or if City/Village/Township does not elect to remove such items at the City/Village/Township's cost after LICENSEE's failure to so remove prior to one hundred and eighty (180) days subsequent to the issuance of notice pursuant to this Section 3.4, any items of LICENSEE's property, including without limitation the DAS/Small Cell Networks, remaining on or about the Public Ways or stored by the City/Village/Township after the City/Village/Township's removal thereof may, at the City/Village/Township's option, be deemed abandoned and the City/Village/Township may dispose of such property in any manner allowed by Law, and in accordance with any legal rights of persons other than the City/Village/Township who own poles located in the Public Way and used by LICENSEE. Alternatively, the City/Village/Township may elect to take title to such abandoned property, whether the City/Village/Township is provided by the LICENSEE, an instrument satisfactory to the City/Village/Township transferring to the City/Village/Township the ownership of such property, or not. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

3.5 Risk of Loss or Damage. LICENSEE acknowledges and agrees that LICENSEE bears all risk of loss or damage of its equipment and materials, including, without limitation, the DAS/Small Cell Networks, installed in the Public Rights-of-Way pursuant to this Agreement from any cause, and the City/Village/Township shall not be liable for any cost of repair to damaged DAS/Small Cell Networks, including, without limitation, damage caused by the City/Village/Township's removal of DAS/Small Cell Networks, except to the extent that such loss or damage was caused by the willful misconduct of the City/Village/Township, including without limitation, each of its commissions, boards, departments, officers, agents, employees or contractors.

3.6 Removal or Relocation of DAS/Small Cell Network at City/Village/Township's Request. LICENSEE understands and acknowledges that the City/Village/Township, at any time and from time to time, may require LICENSEE to remove or relocate upon a written request from the City/Village/Township on ten (10) Business Days' notice at LICENSEE's sole cost and expense, portions of the DAS/Small

Cell Network whenever City/Village/Township reasonably determines that the removal or relocation is needed: (1) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a City/Village/Township project, (2) because the DAS/Small Cell Network interferes with or adversely affects proper operation of the light poles, traffic signals, City/Village/Township-owned communications systems or other City/Village/Township facilities, (3) because of a sale or vacation of the Public Ways by the City/Village/Township, (4) because there is a change in use of the Public Ways by the City/Village/Township provided such use similarly effects similarly LICENSED users in the public right of way, (5) because there is damage to and/or removal of the pole, or (6) to preserve and protect the public health and safety, in a manner not inconsistent with 47 U.S.C. § 332(c)(7). LICENSEE shall at its own cost and expense remove, relocate and/or adjust the DAS/Small Cell Network, or any part thereof, to such other location or locations in the Public Rights-of-Way, or in such manner, as appropriate, as may be designated or granted, in writing and in advance, by the City/Village/Township. Such removal, relocation, adjustment shall be completed within the time prescribed by the City/Village/Township in its written request and in accordance with the terms of this Agreement. LICENSEE shall not be in default hereunder if it has taken appropriate action as directed by the City/Village/Township to obtain such grant. If LICENSEE fails to remove, relocate, adjust or support any portion of the DAS/Small Cell Network as described by the City/Village/Township within the prescribed time, City/Village/Township may take all reasonable, necessary, and appropriate action, as stated in Section 3.4.

4.0 PERMIT, LIMITATIONS AND RESTRICTIONS

4.1 Limited Authorization. This Agreement does not authorize the placement of DAS/Small Cell Networks or any other equipment on sites, locations, structures or facilities other than those specifically identified herein. Placement of the DAS/Small Cell Networks shall comply with the terms of the City/Village/Township's conditions of access in effect as of the date of execution hereof and as are applied equally to all Persons using the Public Rights-of-Way under grant by the City/Village/Township. The Agreement does not relieve LICENSEE of its burden of seeking any necessary permission from other Agencies which may have jurisdiction regarding LICENSEE's proposed use. LICENSEE further acknowledges that it cannot use any historically or architecturally significant poles located on the public rights-of-way or other street furniture, except as may be otherwise expressly authorized in a specific permit issued by the City/Village/Township.

4.2 No Authorization to Provide Other Services. LICENSEE represents, warrants and covenants that its DAS/Small Cell Networks installed pursuant to this Agreement will be utilized solely for the rendering of telecommunication services, and LICENSEE is not authorized to and shall not use the DAS/Small Cell Networks to offer or provide any other services not specified herein. Failure to abide by this may constitute a breach of this Agreement, and the City/Village/Township, after providing LICENSEE with written notice and a meeting concerning the same, may levy fines in an amount not to exceed one thousand dollars (\$1,000.00) per day until the breach is remedied together with all other remedies available at law or equity

4.3 Reservation of Powers. The City/Village/Township reserves any and all powers it may have, now or in the future under applicable local, state, or federal law, to regulate the DAS/Small Cell Networks, their use, or the use of the Public Rights-of-Way or of other City/Village/Township property. LICENSEE shall be subject to all present and future ordinances of the City/Village/Township and its boards and commissions. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City/Village/Township or of the City/Village/Township's right to require LICENSEE to secure the appropriate permits or authorizations for exercising the rights set forth in this Agreement.

4.4 All Permitted Activities Fees at LICENSEE'S Sole Expense. Notwithstanding any other provision of this Agreement, the construction, operation, maintenance, removal and replacement of DAS/Small Cell Networks, and all other activities permitted hereunder and all fees or obligations of LICENSEE under this Agreement, shall be LICENSEE's sole responsibility at LICENSEE's sole cost and expense.

4.5 Permit. LICENSEE shall obtain, at its sole expense, all applicable permits as are required by City/Village/Township or any other Agency to perform the work and ongoing use, as described in this Agreement, of poles located on the Public Rights-of-Way, including but not limited to a Metro Act Permit pursuant to 2002 PA 48; MCL 484.3101et seq.

4.6 No Real Property Interest Created. Neither LICENSEE's use of the Public Rights-of-Way, nor anything contained in this Agreement, shall be deemed to grant, convey, create, or vest in LICENSEE a real property interest in any portion of the Public Rights-of-Way or any other City/Village/Township property, including but not limited to, any fee or leasehold interest in any land or easement. LICENSEE, on behalf of itself and any permitted successor, lessee, or assign, recognizes and understands that this Agreement may create an interest subject to taxation and that LICENSEE, its successor, lessee or assign may be subject to the payment of such taxes.

4.7 All Rights Nonexclusive. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the City/Village/Township to use, and to allow any other Person or Persons to use, any and all parts of the Public Rights-of-Way, exclusively or concurrently with any other Person or Persons and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the Public Rights-of-Way now or at any time during the term of this Agreement, including without limitation any Encumbrances granted, created or allowed by the City/Village/Township at any time.

4.8 Co-Location. This Agreement does not grant or approve any co-location rights to any person or entity, related or unrelated to the LICENSEE. LICENSEE is authorized to install one antenna per site. Additional antennas require new and additional

licensure at the City/Village/Township's sole discretion. In the event the City/Village/Township grants a co-location or Metro Act or similar right of way use request to a third party, LICENSEE shall make such accommodations necessary to allow such co-location or pole attachment on any pole or other support structure referenced in this AGREEMENT. This includes fees and/or pole attachment agreements and fees that are fair and reasonable as defined by the City, FCC and or MPSC.

5.0 WAIVERS AND INDEMNIFICATION

5.1 Non-Liability of City/Village/Township Officials, Employees and Agents.

No elective or appointive board, commission, member, officer, employee or other agent of the City/Village/Township shall be personally liable to LICENSEE, its successors and assigns, in the event of any default or breach by the City/Village/Township or for any amount which may become due to LICENSEE, its successors and assigns, or for any obligation of City/Village/Township under this Agreement.

5.2 Obligation to Indemnify the City/Village/Township. LICENSEE, its successors and assigns, shall hold harmless, defend, protect and indemnify the City/Village/Township, including, without limitation, each of its commissions, departments, officers, agents, employees and contractors, from and against any and all actions, losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs, judgments or suits including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") of any kind allegedly arising directly or indirectly from: (i) any act by, omission by, or negligence of LICENSEE or its contractors or subcontractors, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Agreement, or while in or about the Public Rights-of-Way or any other City/Village/Township property for any reason connected in any way whatsoever with the performance of the work, conduct of the activities or presence of the DAS/Small Cell Networks authorized by this Agreement, or allegedly resulting directly or indirectly from the presence, construction, installation, maintenance, replacement, removal or repair of the DAS/Small Cell Networks, (ii) any accident, damage, death or injury to any contractor, subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work, conduct of the activities or presence of the DAS/Small Cell Networks authorized by this Agreement, or while in or about the Public Rights-of-Way, for any reason connected with the performance of the work or conduct of the activities authorized by this Agreement, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Agreement, (iii) any accident, damage, death or injury, to real or personal property, good will, and Person(s) in, upon or in any way allegedly connected with the work or activities authorized by this Agreement or the presence of the DAS/Small Cell Networks from any cause or claims arising at any time including, without limitation, injuries or damages allegedly caused, directly or indirectly, in whole or in part, by radio wave transmission or electromagnetic fields emitted by the DAS/Small Cell Networks, (iv) any Release, or threatened Release, of any Hazardous Material caused in whole or in part by LICENSEE in, under, on or about the property subject to this Agreement or into the environment, or resulting directly or indirectly from the DAS/Small Cell Networks or the work or activities authorized by this Agreement, (v)

any violation by LICENSEE of the terms and conditions hereof or any permit or grant issued by any Agency in connection with the DAS/Small Cell Networks or Services or pursuant hereto, or any misrepresentation made herein or in any document given by LICENSEE in connection herewith, and (vi) any direct or indirect interference by LICENSEE or the DAS/Small Cell Networks.

5.3 Scope of Indemnity. LICENSEE shall hold harmless, indemnify and defend the City/Village/Township as required herein, including without limitation, each of its commissions, boards, departments, officers, agents, employees and contractors, except only for claims resulting from the sole negligence or willful misconduct of the City/Village/Township, including without limitation, each of its commissions, departments, officers, agents, employees and contractors. LICENSEE specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City/Village/Township from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered in writing to LICENSEE by the City/Village/Township and continues at all times thereafter. LICENSEE agrees that the indemnification obligations assumed under this Agreement shall survive expiration or other termination of this Agreement.

5.4 No Liability for Damage, Death or Bodily Injury. Neither City/Village/Township nor any of its commissions, departments, boards, officers, agents, contractors, or employees shall be liable for any damage to the property of LICENSEE, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the DAS/Small Cell Networks or activities authorized by this Agreement, the condition of any City/Village/Township property subject to this Agreement or LICENSEE's use of any City/Village/Township property, except as otherwise provided herein.

5.5 Waiver of All Claims. LICENSEE acknowledges that this Agreement is terminable by the City/Village/Township under limited circumstances as provided herein, and in view of such fact LICENSEE expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial, and LICENSEE expressly assumes the risk of selling its Services which may be affected by the termination of this Agreement. Without limiting any indemnification obligations of LICENSEE or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, LICENSEE fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City/Village/Township, its departments, commissions, officers, boards, Commissioners and employees, and all persons acting by, through or under each of them, under any present or future Laws, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that the City/Village/Township exercises its right to terminate this Agreement, as specifically provided herein.

5.6 No Liability for Consequential or Incidental Damages. LICENSEE expressly acknowledges and agrees that the City/Village/Township will not be liable for

any consequential or incidental damages, including, but not limited to, lost profits and loss of good will, arising out of termination of this Agreement or disruption to the DAS/Small Cell Networks or LICENSEE's permitted activities hereunder. The City/Village/Township would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City/Village/Township or its agents, and LICENSEE expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of LICENSEE or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, LICENSEE fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages (including without limitation, lost profits and loss of good will), and covenants not to sue for such damages, City/Village/Township, its departments, boards, commissions, officers, Commissioners and employees, and all persons acting by, through or under each of them, arising out of this Agreement or the work and activities authorized hereunder, including, without limitation, any interference with uses conducted by LICENSEE pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence or gross negligence of City/Village/Township or its agents.

5.7 No Interference. LICENSEE shall not unreasonably interfere in any manner with the existence and operation of any and all public and private facilities existing now or in the future, including but not limited to sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, telecommunications facilities, utility, and municipal property without the express grant of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. LICENSEE shall be responsible for repair and restoration of any damage caused by such interference, to the extent it is caused by LICENSEE, to facilities belonging to the City/Village/Township. The City/Village/Township agrees to require the inclusion of the same prohibition on interference as that stated above in all similar type agreements City/Village/Township may enter into after the date hereof.

5.8 Survival of Termination. The provisions of Sections 5.1 through 5.7, inclusive, shall survive any termination of this Agreement.

6.0 INSURANCE

6.1 Amounts and Coverages. LICENSEE will maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

6.1.1 Workers' Compensation, with Employer's Liability limits of not less than One million dollars (\$1,000,000) each accident.

6.1.2 Commercial General Liability Insurance with limits not less than five million dollars (\$5,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Owners and Contractors' Protective, Broadform Property Damage, Products Completed Operations.

6.1.3 Business Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including owned, non-owned and hired auto coverage, as applicable.

6.2 Required Provisions. General Liability and Automobile Liability Insurance shall be endorsed to provide for the following:

6.2.1 Name as additional insureds: the City/Village/Township, its officers, agents and employees.

6.2.2 That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

6.3 Advance Notice of Cancellation. All policies shall be endorsed to provide: thirty (30) days advance written notice to City/Village/Township of cancellation or intended non-renewal, mailed to the following address:

6.4 Claims-Made Policies. Should any of the required insurance be provided under a claims-made form, LICENSEE shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of six (6) years beyond the Agreement expiration, to the effect that, should any occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

6.5 General Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

6.6 Receipt of Certificates of Insurance. Certificates of insurance, in the form and with insurers reasonably satisfactory to the City/Village/Township, evidencing all coverages above shall be furnished to the City/Village/Township before commencing any

operations under this Agreement, with complete copies of policies promptly upon the City/Village/Township's written request.

6.7 Effect of Approval of Insurance. Approval of the insurance by the City/Village/Township shall not relieve or decrease the liability of LICENSEE hereunder.

6.8 Effect of Lapse of Insurance. This Agreement shall terminate immediately, after written notice to LICENSEE and an opportunity to cure of three (3) Business Days, upon any lapse of required insurance coverage.

7.0 LICENSE FEE, RECORD and DEPOSITS

In connection with the work to be performed and activities to be conducted by LICENSEE under this Agreement:

7.1 Right-of-Way Fees for Installation and operation of DAS/Small Cell related Metro Act exempt facilities including antennas, supporting structures for antennas, poles equipment shelters or houses . Initial Entry Fee: In order to compensate the City/Village/Township for LICENSEE's initial entry upon and deployment of DAS/Small Cell related Metro Act exempt facilities including antennas, supporting structures for antennas, poles equipment shelters or houses within the Public Rights-of-Way, LICENSEE shall pay to the City/Village/Township one or more of the following :

Administrative Fee. For the first year of this Agreement an administrative right of way fee, in addition to the regular monthly fee referenced below, shall be \$_____, based upon the nature of pole and appurtenant area upgrades and replacements agreed to by the parties. A reasonable portion of these funds can be used for City/Village/Township incurred costs as needed.

Monthly Fee Per LICENSEE or City/Village/Township owned pole, with LICENSEE owned Antenna and related structures and equipment: As compensation for the use of any and all structures in the City/Village/Township Public Ways including poles or other structures and facilities, in whole or in part, whether held in fee or in trust by the City/Village/Township ("City/Village/Township Facility") or by LICENSEE, LICENSEE shall pay to the City/Village/Township a monthly fee (the "Monthly Fee") in the amount identified in the schedule set forth immediately below, per site for the use of each such facility or structure, whether City/Village/Township owned or owned by LICENSEE, which location is located in the City/Village/Township Public Ways and upon which a DAS/Small Cell Network antenna, or any supporting structure thereof, has been installed pursuant to the other requirements of this Agreement. The aggregate Monthly Fee with respect to each year of the term shall be an amount equal to the number of sites on City/Village/Township owned rights of way or other property locations or equipment or Facilities on which LICENSEE's equipment was currently existing during the preceding month, multiplied by the Monthly Fee, prorated as appropriate, and shall be due and payable within 30 Days of the end of each quarter.

The parties to this Agreement do not intend, and this Agreement does not grant, the utilization of any jointly owned or third party owned properties in fulfillment of this Agreement.

This Agreement anticipates AND AUTHORIZES ONLY ONE ANTENNA PER POLE OR STRUCTURE AND every antenna as well as related support structure, installed by LICENSEE in City/Village/Township Public Ways shall be subject to a monthly fee as identified in this section:

Schedule of Monthly Fees per antenna or pole or both (not more than one antenna/pole):

\$_____ for new (not pre-existing) poles (e.g., concrete light poles, fiberglass poles, metal poles) other than in downtown districts

\$_____ for new poles in downtown districts, i.e. main intersection poles, in districts where there are buildings of several stories, or other large complexes, within 200 feet of the small cell

\$_____ for the use of ornamental poles in downtown districts

(It is the intent of the parties that all antennas are to be placed on poles only, as described above.)

The parties to this Agreement do not intend, and this Agreement does not grant, the utilization or installation of any City/Village/Township owned public places, buildings or structures other than certain poles in the City/Village/Township Public Ways as specifically identified in Exhibit A.

7.2 Retention of Records. LICENSEE shall at all times keep and maintain full, true and correct business and financial records associated with this Agreement and provide such records on a quarterly basis in such form as to support the payments made under Section 7.1 above.

7.3 Late Payment Charge. If LICENSEE fails to pay any amounts payable under this Agreement within ten (10) days following the due date thereof, and after written notice of such non-payment, such unpaid amount shall be subject to a late payment charge equal to eighteen (18%) of the unpaid amount in each instance. The late payment charge has been agreed upon by the City/Village/Township and LICENSEE, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that the City/Village/Township will incur because of any such failure by LICENSEE, the actual costs thereof being extremely difficult if not impossible to determine.

7.4 Other Payments and Documentation. In addition to all other fees to be paid to the City/Village/Township hereunder, LICENSEE shall timely pay to the City/Village/Township all applicable deposit fees, permit fees, engineering fees and other fees or amounts, required to be paid by LICENSEE to the City/Village/Township in connection with obtaining permits or performing work under this Agreement, and as required by any federal, state or local law, statute, ordinance, rule or regulation.

LICENSEE therefore acknowledges and agrees that this Agreement alone is not sufficient in and of itself authorization from the City/Village/Township for the installation and operation of the DAS/Small Cell Networks and that additional documentation may be required by the City/Village/Township.

7.5 Security Deposit/Bond. Prior to performing any work necessary under this Agreement, LICENSEE will deliver to the City/Village/Township a valid performance bond in the sum of _____ thousand dollars (\$ _____), issued by a surety company acceptable to the City/Village/Township's Controller in the form attached hereto as Exhibit B. LICENSEE agrees and acknowledges that it will obtain a bond which allows for the use of the bond to cover incidental expenses and costs, damages and fees not covered by any insurance policies including but not limited to: interest, charges by the City/Village/Township to remove DAS/Small Cell Networks and unpaid permit and administrative fees. LICENSEE shall keep such surety bond, at its expense, in full force and effect until the sixtieth (60th) day after the Expiration Date or other termination hereof, to insure the faithful performance by LICENSEE of all of the covenants, terms and conditions of this Agreement. Such bond shall provide thirty (30) days prior written notice to the City/Village/Township of cancellation or material change thereof. In the event of any non-extension of the bond, LICENSEE shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if LICENSEE fails to do so the City/Village/Township shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by the City/Village/Township shall be returned to LICENSEE upon replacement of the bond or deposit of cash security in the full amount required hereunder. Such bond submitted pursuant to the requirements of a related Metro Permit shall satisfy the bond requirements of this Agreement.

8.0 WORK STANDARDS

8.1 Performance of Work. LICENSEE shall use and exercise due care, caution, skill and expertise in performing all work under this Agreement and shall take all reasonable steps to safeguard and maintain in clean and workmanlike manner, all work site areas, including, without limitation, the light poles located on Public Rights-of-Way and other existing facilities and property. All work to be undertaken by LICENSEE in the Public Ways shall at all times be performed by workers in accordance with generally accepted industry practice.

8.2 Work Plan. Prior to performing any work necessary under this Agreement, LICENSEE shall present a map and written proposal describing the work to be performed and the facilities, methods and materials (if any) to be installed ("Work Plan") to the City/Village/Township for review and will not perform any work until it has received City/Village/Township Authorization of the Work Plan. In addition, prior to conducting any work in the Public Rights-of-Way, LICENSEE shall provide to the City/Village/Township a current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or

complaints resulting, directly or indirectly, from the DAS/Small Cell Network installed pursuant to this Agreement. As soon as is reasonably practical following installation of the DAS/Small Cell Network, LICENSEE shall deliver as-built drawings to City/Village/Township Hall.

8.3 No Underground Work Without Written Authorization. LICENSEE hereby represents, warrants and covenants that LICENSEE shall perform no excavation, trenching, coring, boring, or digging into the ground or installation of any equipment or other material into the ground, or any other underground work in connection with the work to be performed or Services to be provided by LICENSEE under this Agreement, except to the extent expressly approved by the City/Village/Township. LICENSEE further represents, warrants and covenants that it shall not otherwise disturb or disrupt the operation or maintenance of any sanitary sewers, storm drains, gas or water mains, or other underground conduits, cables, mains, or facilities.

8.4 Repair or Replacement of Damaged Facilities or Property. Upon written request, LICENSEE agrees to repair or replace to City/Village/Township's reasonable satisfaction any City/Village/Township-owned facilities or City/Village/Township-owned property that the City/Village/Township determines has been damaged, destroyed, defaced or otherwise injured as a result of the work performed or Services provided by LICENSEE under this Agreement. LICENSEE shall perform such work at no expense to the City/Village/Township, except to the extent such damage, destruction, defacement, or injury was caused by the sole negligence or willful misconduct of City/Village/Township.

8.5 Modification of Work Plans. If during the term of this Agreement, the City/Village/Township determines that the public health or safety requires a modification of or a departure from the Work Plan submitted by LICENSEE and granted, the City/Village/Township shall have the authority to identify, specify and delineate the modification or departure required, and LICENSEE shall perform the work allowed under this Agreement in accordance with the City/Village/Township-specified modification or departure at LICENSEE's sole expense. The City/Village/Township shall provide LICENSEE with a written description of the required modification or departure, the public health or safety issue necessitating the modification or departure, and the time within which LICENSEE shall make, complete or maintain the modification or departure required.

9.0 TERMINATION

9.1 Immediate Termination upon Notice in Certain Circumstances. In addition to all other remedies provided by Law or in equity, either party may terminate this Agreement immediately upon written notice to the other party in the event of either of the following:

9.1.1 By City/Village/Township after written notice to LICENSEE and after opportunity to meet with representatives of the City/Village/Township, if the City/Village/Township reasonably determines that LICENSEE's continued use of the Public Ways will adversely affect public health or safety;

9.1.2 By either party (the “Non-Defaulting Party”) if the other party has failed to perform any of its material obligations under this Agreement; provided, however, that if the Defaulting Party's failure to perform under or comply with this Agreement is capable of being cured, and if a specific notice or cure period or time for performance of such obligation is not otherwise specified in this Agreement, then the Non-Defaulting Party shall provide the Defaulting Party with a notice of the Defaulting Party's failure to perform or comply and provide the Defaulting Party with thirty (30) days from the date of the notice to cure the failure to perform or comply to the Non-Defaulting Party's reasonable satisfaction; provided, further, that upon the occurrence during the term of this Agreement of two (2) defaults of the same obligation by either Party, the Non-Defaulting Party shall not be required to provide any notice regarding the Defaulting Party's failure to perform such obligation, and any subsequent failure by the Defaulting Party after the Defaulting Party has received two such notices shall constitute a default by the Defaulting Party hereunder without any requirement on the part of the Non-Defaulting Party to give the Defaulting Party notice of such failure or an opportunity to cure.

9.2 Effect of Termination. In the event of termination of this Agreement as herein provided, LICENSEE shall immediately cease all work being performed under this Agreement, excepting only that work necessary for LICENSEE to remove all DAS/Small Cell Networks from the Public Rights-of-Way as provided in Section 3.4 above and repair as needed. Termination of this Agreement by the City/Village/Township as herein provided shall constitute the withdrawal of any grant, consent or authorization of the City/Village/Township for LICENSEE to perform any construction or other work under this Agreement in the Public Rights-of-way or on public property excepting only that work necessary for LICENSEE to remove all DAS/Small Cell Networks and leave all work site areas in a clean and safe condition and in accordance with Section 3. Upon any such early termination, the City/Village/Township shall promptly remit to LICENSEE a prorated portion of the annual license fee paid to the City/Village/Township, if any.

10.0 NOTICES

Except as otherwise expressly provided in this Agreement, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested, postage prepaid, or reliable commercial overnight courier, return receipt requested, with postage prepaid, to:

CITY/VILLAGE/TOWNSHIP

LICENSEE

or to such other address as either CITY/VILLAGE/TOWNSHIP or LICENSEE may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change.

11.0 COMPLIANCE WITH LAWS

11.1 LICENSEE shall comply with all present and future Laws.

11.2 All facilities installed pursuant to this Agreement shall be constructed to comply with all lawful federal, state and local construction and applicable telecommunications requirements.

12.0 MISCELLANEOUS

12.1 Amendments. Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

12.2. Representations and Warranties. Each of the persons executing this Agreement on behalf of LICENSEE does hereby covenant, represent and warrant that, to the best of his or her knowledge, (a) LICENSEE is a duly authorized and existing _____ corporation, has and is qualified to do business in the _____, and has full right and authority to enter into this Agreement, (b) each and all of the persons signing on behalf of LICENSEE are authorized to do so, (c) all financial statements and reports previously provided to the City/Village/Township by LICENSEE are true and complete in all material respects and accurately reflect the financial condition of LICENSEE as of the date such statements were provided to the City/Village/Township, and LICENSEE’s financial condition as of the date it executes this Agreement is not materially worse than that reflected in the most recent of such financial statements and reports, and (d) the DAS/Small Cell Networks installed pursuant to this Agreement shall comply with all applicable FCC standards regarding radio frequencies and electromagnetic field emissions. Upon the City/Village/Township's written request, LICENSEE shall provide the City/Village/Township with evidence reasonably satisfactory to the City/Village/Township confirming the foregoing representations and warranties.

12.3 Interpretation of Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement.

Use of the word “including” or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as “without limitation” or similar words, are used.

12.4 Assignment; Successors and Assigns. Neither this Agreement nor any part of LICENSEE's rights hereto may be assigned, pledged or hypothecated, in whole or in part, without the express written consent of the City/Village/Township, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of LICENSEE hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed an assignment for the purposes of this Agreement, provided that LICENSEE deliver to the City/Village/Township the following: (1) Bond issued in the name of transferee; (2) Assignment and Assumption Agreement between City/Village/Township and transferee; (3) Certificate of Insurance naming transferee as insured. In the event LICENSEE files a petition in bankruptcy pursuant to 11 U.S.C. Sections 101, et seq., the assignment of this Agreement shall be governed by the provisions of the Bankruptcy Code. An assignment of this Agreement is only enforceable against the City/Village/Township if LICENSEE or its trustee in bankruptcy complies with the provisions of 11 U.S.C. Section 365, including obtaining the authorization from the Bankruptcy Court. City/Village/Township hereby expressly reserves all of its defenses to any proposed assignment of this Agreement. Any person or entity to which the Bankruptcy Court authorizes the assignment of this Agreement shall be deemed without further act to have assumed all of the obligations of LICENSEE arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to City/Village/Township an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to City/Village/Township, shall be the exclusive property of City/Village/Township, and shall not constitute property of LICENSEE or of the estate of LICENSEE within the meaning of the Bankruptcy Code.

12.5 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law.

12.6 Governing Law. This Agreement shall be construed and enforced in accordance with the Laws of the State of Michigan.

12.7 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Agreement) contains the entire agreement between the parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Agreement and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

12.8 Time of Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.

12.9 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

12.10 Relationship of Parties. The City/Village/Township is not, and none of the provisions in this Agreement shall be deemed to render the City/Village/Township, a partner in LICENSEE's business, or joint venturer or member in any joint enterprise with LICENSEE. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's prior written consent as provided herein. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

12.11 Most Favored Jurisdiction. Should LICENSEE, after the date that LICENSEE receives all permits and Authorizations necessary to install and operate the network as contemplated in this Agreement, enter into a DAS/Small Cell LICENSE Agreement with another government body, school, or municipality within the State of Michigan which contains financial benefits for such government body, school, or municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City/Village/Township's reasonable opinion substantially superior to those in this Agreement, City/Village/Township shall have the right to require that LICENSEE modify this Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise. Any increase in financial benefits in a similar agreement shall be paid to the City/Village/Township retroactive to the date LICENSEE entered into such superior agreement with another entity.

LICENSEE

_____,
a _____

By: _____
Title: _____
Dated: _____

CITY/VILLAGE/TOWNSHIP OF _____,
a _____

By: _____
Title: _____
Dated: _____

EXHIBITS

Exhibit A DAS/Small Cell Network Plans and Specs
Exhibit B Bond

METRO Act
Unilateral Form
Revised 12/06/02

MODIFIED RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT FOR DAS/SMALL CELL SYSTEM LINES ONLY
(Revised by City/Village/Township _____ on _____, 2016)

This permit issued this ____ day of _____, 2016 by the City/Village/Township of _____

1 Definitions

- 1.1 Date of Issuance shall mean the date set forth above.
- 1.2 Manager shall mean Municipality's Manager or his or her designee.
- 1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of-Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.4 Municipality shall mean the City/Village/Township of _____, a Michigan municipal corporation.
- 1.5 Permit shall mean this document.
- 1.6 Permittee shall mean _____, whose address is _____.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. **Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters, poles or houses,** and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

- 2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A, **(not including antennas, supporting structures for antennas, equipment shelters, poles or houses)** to construct, install and maintain Telecommunication Facilities on the terms set forth herein.
 - 2.1.1 Exhibit A may be modified by Manager upon written request by Permittee. **Exhibit A is modified to the extent necessary exclude any antennas, supporting structures for antennas, equipment shelters, poles or houses.**
 - 2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality’s legislative body.
 - 2.1.3 **Any and all permits, approvals, franchises, leases or licenses for antennas, supporting structures for antennas, equipment shelters, poles or houses must be applied for in a separate franchise, lease or license application requesting same.**
- 2.2 Overlapping. Permittee shall not allow the wires or any other facilities of a third party to be overlapped to the Telecommunication Facilities without Municipality’s prior written consent. Municipality’s right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- 2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, **modify or deny**, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

- 3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:
 - 3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee’s local office (in or near Municipality) is

 - 3.1.2 If Permittee’s engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local

office, the location address, phone number and contact person (title or department) for them is _____.

3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is: See Answer to 3.1.1.

3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is _____.

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 Route Maps. Within ninety (90) days after the substantial completion of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

4.1 No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality

will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.
- 4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials.

Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.
- 4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.
- 4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.
- 4.9 Street Vacation If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal

and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and removal of its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.

- 4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of 2013; MCL 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.
- 4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively “claim” for this Part 5) (including, without limitation, attorneys’ fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee’s use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality’s acceptance of such self-insurance shall not be unreasonably withheld.
- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
- 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3)

years after the term of the policy.

- 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
 - 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
 - 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such

coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

- 6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

- 7.1.1 five years from the Date of Issuance; or
- 7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or
- 7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
- 7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
- 7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance/Removal Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality requires Permittee to post a \$_____ bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended

[MCL § 484.3115(3). The bond may be renewed or replaced from year to year.

9 Fees

9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.1.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.2 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be

unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee’s ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

If to Municipality, to _____.

12.1.1 If to Permittee, to _____.

12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” or “video service” as defined in 2006 PA 480; MCL 484.3301 et seq., (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573

and 47 CFR § 76.1500).

- 13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.
- 13.3 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].
- 13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.
- 13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.
- 13.6 **DAS: This Permit is not an approval for the installation of any antennas, supporting structures for antennas, equipment shelters, poles or houses, small cell antenna systems or distributed antenna systems (DAS). The City/Village/Township relies on paragraph 1.8 of this State approved Permit Form as well as MCL 484.3102(j), which specifically excludes “antenna” from application of the Metro Act, and thus not properly subject to this Metro Act Permit.**

The City/Village/Township rejects Metro Act Determination #1 as unsupported by and in direct conflict with the language of the Metro Act, at MCL 484.3102(j), paragraph 1.8 of the State approved Unilateral Metro Act Permit form, and in violation of the City/Village/Township’s zoning and other regulatory authority and proprietary interests with respect to such antennas and supporting structures as ordered in FCC 14-153 (October 17, 2104).

By granting this permit, the City/Village/Township makes no representations about any subsequent agreement concerning the ability to install any antennas, supporting structures for antennas, equipment shelters, poles or houses, small cell antenna systems or distributed antenna systems (DAS) or that permission will be granted. City/Village/Township further expressly affirms that any such placement will be subject to Permittee’s compliance with all City/Village/Township ordinances and regulations including, without limitation, all zoning, land use and engineering requirements.

City/Village/Township of _____

By: _____

Its: _____

Date: _____

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

[Permittee Name]

By: _____

Its: _____

Date: _____

Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities

Exhibit B

Bond

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE IV AND TO REPEAL ARTICLE V
OF CHAPTER 86 OF THE CODE OF THE CITY OF WYOMING

THE CITY OF WYOMING ORDAINS:

Section 1. That Article IV of Chapter 86 of the Code of the City of Wyoming is hereby amended to read as follows:

IV. STORMWATER

DIVISION 1. GENERAL

Sec. 86-351. Statutory Authority and Title.

This ordinance is adopted in accordance with the Home Rule City Act, as amended, being MCL 117.1, et seq.; the Drain Code of 1956, as amended, being MCL 280.1, et seq.; the Land Division Act, as amended, being MCL 560.1, et seq.; the Revenue Bond Act, as amended, being MCL 141.101, et seq.; and the Natural Resources and Environmental Protection Act, as amended, being MCL 324.101, et seq.; Section 401(p) of the Federal Water Pollution Control Act (also known as the Clean Water Act), as amended, being 33 USC 1342(p) and 40 CFR Parts 9, 122, 123 and 124; and other applicable state and federal laws.

This ordinance shall be known and may be cited as the **City of Wyoming Stormwater Ordinance**.

Sec. 86-352. Findings.

The City of Wyoming finds that:

- (1) Water bodies, roadways, structures, and other property within, and downstream of the City are at times subjected to flooding;
- (2) Flooding is a danger to the lives and property of the public and is also a danger to the natural resources of the City and the region;
- (3) Land development alters the hydrologic response of watersheds, resulting in increased stormwater runoff rates and volumes, increased flooding, increased stream channel erosion, and increased sediment transport and deposition;
- (4) Stormwater runoff produced by land development contributes to increased quantities of water-borne pollutants;

- (5) Increases of stormwater runoff, soil erosion, and non-point source pollution have occurred as a result of land development, and cause deterioration of the water resources of the City and downstream municipalities;
- (6) Stormwater runoff, soil erosion, and non-point source pollution, due to land development within the City, have resulted in a deterioration of the water resources of the City and downstream municipalities;
- (7) Increased stormwater runoff rates and volumes, and the sediments and pollutants associated with stormwater runoff from future development projects within the City will, absent reasonable regulation and control, adversely affect the City's water bodies and water resources, and those of downstream municipalities;
- (8) Stormwater runoff, soil erosion, and non-point source pollution can be controlled and minimized by the regulation of stormwater runoff from development;
- (9) Post-Construction Stormwater Runoff Program requirements for new and redevelopments within the City are set forth in the 2013 Michigan Department of Environmental Quality (DEQ) *Permit Application for Discharge of Storm Water to Surface Waters of the State from a Municipal Separate Storm Sewer System* (MS4) under the NPDES program (Rev 10/2014).
- (10) Adopting the standards, criteria and procedures contained in this ordinance and implementing the same will address many of the deleterious effects of stormwater runoff;
- (11) Adopting these standards is necessary for the preservation of the public health, safety and welfare.
- (12) Adopting these standards is necessary to comply with the NPDES MS4 General Permit.

Sec. 86-353. Purpose.

It is the purpose of this chapter to establish minimum stormwater management requirements and controls to accomplish, among others, the following objectives:

- (1) To reduce artificially induced flood damage;
- (2) To minimize increased stormwater runoff rates and volumes from identified new land development;
- (3) To minimize the deterioration of existing watercourses, culverts and bridges, and other structures;

- (4) To encourage water recharge into the ground where geologically favorable conditions exist;
- (5) To prevent an increase in non-point source pollution;
- (6) To maintain the integrity of stream channels for their biological functions, as well as for drainage and other purposes;
- (7) To minimize the impact of development upon stream bank and streambed stability;
- (8) To reduce erosion from development or construction projects;
- (9) To preserve and protect water supply facilities and water resources by means of controlling increased flood discharges, stream erosion, and runoff pollution;
- (10) To reduce stormwater runoff rates and volumes, soil erosion, and non-point source pollution, wherever practicable, from lands that were developed without stormwater management controls meeting the purposes and standards of this chapter.
- (11) To reduce the adverse impact of changing land use on water bodies and, to that end, this chapter establishes minimum standards to protect water bodies from degradation resulting from changing land use where there are insufficient stormwater management controls.

Sec. 86-354. Applicability, Exemptions and General Provisions.

- (1) This chapter shall apply to all new development and all redevelopment projects, including private, commercial and public projects that disturb one (1) acre or more, and projects less than one (1) acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more.
- (2) This chapter shall apply to sites less than one (1) acre as provided in this chapter.
- (3) This chapter shall not apply to the following:
 - (a) The installation or removal of individual mobile homes within a mobile home park. This exemption shall not be construed to apply to the construction, expansion, or modification of a mobile home park.
 - (b) Farm operations and buildings, except dwellings, directly related to-farm operations. This exemption shall not apply to greenhouses and other similar structures.

- (c) Plats with preliminary plat approval and other developments with final land use approval prior to the effective date of this ordinance, where such approvals remain in effect.

Sec. 86-355. Definitions.

For the purpose of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this Section unless the context in which they are used specifically indicates otherwise:

- (1) Base Flood – A flood having a one (1) percent chance of being equaled or exceeded in any given year.
- (2) Base Flood Elevation – The high water elevation of the Base Flood, commonly referred to as the "100-year flood elevation".
- (3) Base Flood Plain – The area inundated by the Base Flood.
- (4) Best Management Practices (BMPs) – A practice, or combination of practices and design criteria that accomplish the purposes of this ordinance (including, but not limited to reducing stormwater runoff rates, reducing stormwater runoff volume, and reducing the amount of pollutants in stormwater) as determined by the City, and, where appropriate, the standards of the County Drain Commissioner.
- (5) Building Opening – Any opening of a solid wall such as a window or door, through which floodwaters could penetrate.
- (6) Clean Water Act – The Federal Water Pollution Control Act, 33 USC Sec 1251 et seq., as amended, and the applicable regulations promulgated thereunder.
- (7) Construction Site Stormwater Runoff – Stormwater runoff from a development site following an earth change and before final site stabilization.
- (8) Detention – A system which is designed to capture stormwater and release it over a given period of time through an outlet structure at a controlled rate.
- (9) Development –The installation or construction of buildings, structures or other impervious surfaces on a site that disturbs one (1) acre of land or more, including projects less than one (1) acre that are part of a larger common plan or sale that would disturb one (1) acre or more. A development may include a land division, plat, site condominium, planned unit development, mobile home park, private road or other special land use.

- (10) Developer – Any person or entity proposing or implementing the development of land.
- (11) Development Site – Any land that is being or has been developed, or that a developer proposes for development.
- (12) Discharger – Any person or entity who directly or indirectly discharges stormwater from any property.
- (13) Drain – Any drain as defined in the Drain Code of 1956, as amended, being MCL 280.1, et. seq.
- (14) Drainage – The collection or conveyance of stormwater, ground water and/or surface water.
- (15) Drainageway – The area within which surface water or ground water is conveyed from one part of a lot or parcel to another part of the lot or parcel or to adjacent land or to a watercourse.
- (16) Earth Change – Any human activity which removes ground cover, changes the slope or contours of the land, or exposes the soil surface to the actions of wind and rain. Earth change includes, but is not limited to, any excavating, surface grading, filling, landscaping, or removal of vegetative roots.
- (17) EPA – The United States Environmental Protection Agency.
- (18) Erosion – The process by which the ground surface is worn away by action of wind, water, gravity or a combination thereof.
- (19) Federal Emergency Management Agency (FEMA) – The agency of the federal government charged with emergency management.
- (20) Flood or Flooding – A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of water bodies or the unusual and rapid accumulation of surface water runoff from any source.
- (21) Local Floodplain – Any land area subject to periodic flooding as determined by the local government.
- (22) State-Regulated Floodplain – Any area of land adjoining a river or stream that will be inundated by a base flood that has a drainage area of 2 square miles or more when measured at the downstream limits of the proposed development site.
- (23) Flood-Proofing – Any structural and/or non-structural additions, changes, or adjustments to structures or property that reduce or eliminate flood damage to land, improvements, utilities or structures.

- (24) Flood Protection Elevation (FPE) – The Base Flood Elevation plus one (1) foot at any given location.
- (25) Floodway – The channel of a river or stream and the portions of the floodplain adjoining the channel that are reasonably required to carry and discharge a 100-year flood.
- (26) Grading – Any stripping, excavating, filling, and stockpiling of soil or any combination thereof.
- (27) Illicit Connection – Any method or means for conveying an illicit discharge into water bodies or the City's stormwater system.
- (28) Illicit Discharge – Any discharge to water bodies or stormwater systems that does not consist entirely of stormwater, discharges pursuant to the terms of an NPDES permit, or exempted discharges as defined in this ordinance.
- (29) Impervious Surface – Any surface that does not allow stormwater to percolate into the ground.
- (30) Lowest Floor – The lowest floor or the lowest enclosed area (including a basement), but not including an unfinished or flood-resistant enclosure which is usable solely for parking of vehicles or building access.
- (31) MDNRE – Michigan Department of Natural Resources and Environment.
- (32) NPDES – National Pollution Discharge Elimination System.
- (33) Overland flow-way – Surface area that conveys a concentrated flow of stormwater runoff.
- (34) Person – An individual, firm, partnership, association, public or private corporation, public agency, instrumentality, or any other legal entity.
- (35) Plan – Written narratives, specifications, drawings, sketches, written standards, operating procedures, or any combination of these.
- (36) Pollutant – A substance discharged which includes, but is not limited to the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act.

- (37) Property Owner – Any person having legal or equitable title to property or any person having or exercising care, custody, or control over any property.
- (38) Retention – A system which is designed to capture stormwater and contain it until it infiltrates the soil or evaporates.
- (39) State of Michigan Water Quality Standards – All applicable State rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 PA 451, as amended.
- (40) Storm Drain – A system of open or enclosed conduits and appurtenant structures intended to convey or manage stormwater runoff, ground water and drainage.
- (41) Stormwater Permit – A permit issued pursuant to this ordinance.
- (42) Stormwater Runoff – Water that originates during precipitation events or with snowmelt. Stormwater that does not soak into the ground or evaporate becomes stormwater runoff, which either flows directly into surface waters or is channeled into storm drainage systems.
- (43) Stormwater Management Facility – The method, structure, area, system, or other equipment or measures which are designed to receive, control, store, convey, infiltrate, or treat stormwater.
- (44) Stream – A river, stream or creek which may or may not be serving as a drain, or any other water body that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.
- (45) Water Body – A river, lake, stream, creek or other watercourse or wetlands.
- (46) Watershed – A land area draining into a water body.
- (47) Wetlands – Land characterized by the presence of water at a frequency and duration sufficient to support wetland vegetation or aquatic life.

DIVISION II. STORMWATER PERMITS

Sec. 86-356. Permit Required.

- (1) No person shall engage in any development activity without first receiving a stormwater permit from the City pursuant to this chapter.
- (2) The granting of a stormwater permit only authorizes the discharge of stormwater from the development for which the permit is required, subject to the terms of the

permit. It shall not be deemed to approve other development, other land use activities, or replace other required permits.

Sec. 86-357. Stormwater Permit Review Procedure.

The City shall grant a stormwater permit, which may impose terms and conditions in accordance with Section 86-364, only upon compliance with each of the following requirements:

- (1) The developer has submitted a site (drainage) plan complying with Section 86-358 for the approval of post-construction stormwater runoff BMPs.
- (2) The developer has paid or deposited the stormwater permit review fee pursuant to Section 86-359.
- (3) The developer has paid or posted the applicable financial guarantee pursuant to Section 86-361.
- (4) The developer agrees to provide all easements necessary to implement the approved drainage plan and to otherwise comply with this Chapter. All easements shall be acceptable to the City in form and substance and shall be recorded with the County Register of Deeds. At the discretion of the City the final easement may be required prior to permit issuance.
- (5) The developer provides the required maintenance agreement for routine, emergency, and long-term maintenance of all structural and vegetative BMPs installed and implemented to meet the performance standards, and in compliance with the approved drainage plan and this Ordinance including, but not limited to, Section 86-390 (Maintenance Agreements). The maintenance agreement shall be acceptable to the City in form and substance, shall be binding on all future property owners, and shall be recorded with the County Register of Deeds.

Sec. 86-358. Drainage Plan.

The developer shall provide adequate stormwater management facilities for the development site. Adequate facilities reduce the exposure of people to drainage-related inconvenience and to health and safety hazards. They reduce the exposure of real and personal property to damage through stormwater inundation. The stormwater management system and stormwater best management practices (BMPs) shall be designed in accordance with the latest version of the document “Stormwater Standards, Procedures and Design Criteria for Stormwater Management” (aka “Stormwater Standards” manual) published by the City.

The developer shall provide a drainage plan to the City for review and approval by the City. The drainage plan shall identify and contain all of the information required in the “Stormwater Standards” manual, including an implementation plan.

The implementation plan for construction and inspection of all stormwater management facilities necessary to the overall drainage plan shall include a schedule of the estimated dates of completing construction of the stormwater management facilities shown on the plan and an identification of the proposed inspection procedures to ensure that the stormwater management facilities are constructed in accordance with the approved drainage plan.

Sec. 86-359. Stormwater Permit Review Fees.

- (1) All expenses and costs incurred by the City directly associated with processing, reviewing and approving or denying a stormwater permit application shall be paid (or reimbursed) to the City from the funds in a separate escrow account established by the developer, as provided in subsection (2). The City may draw funds from a developer's escrow account to reimburse the City for out-of-pocket expenses incurred by the City relating to the application. Such reimbursable expenses include, but are not limited to, expenses related to the following:
 - (a) Services of the City Attorney directly related to the application.
 - (b) Services of the City Engineer directly related to the application.
 - (c) Services of other independent contractors working for the City which are directly related to the application.
 - (d) Any additional public hearings, required mailings and legal notice requirements necessitated by the application.
- (2) At the time a developer applies for a stormwater permit, the developer shall deposit with the City, as an escrow deposit, an initial amount as determined by resolution of the City Council for such matters and shall provide additional amounts as requested by the City in such increments as are specified in said resolution. Any excess funds remaining in the escrow account after the application has been fully processed, reviewed, and the final City approval and acceptance of the development has occurred will be refunded to the developer with no interest to be paid on those funds. At no time prior to the City's final decision on an application shall the balance in the escrow account fall below the required initial amount. If the funds in the account are reduced to less than the required initial amount, the developer shall deposit into the account an additional amount as determined by City Council resolution, before the application review process will be continued. Additional amounts may be required to be placed in the escrow account by the developer, at the discretion of the City.

Sec. 86-360. Construction Site Runoff Controls.

Prior to making any earth change on a development site regulated by this ordinance, the developer shall first obtain a soil erosion permit issued in accordance with Part 91 of Act No. 451 of the Public Acts of 1994, as amended, if one is required. The developer shall install stormwater management facilities and shall phase the development activities so as to prevent construction site stormwater runoff and off-site sedimentation. During all construction activities on the development site, the City may inspect the development site to ensure compliance with the approved construction site runoff controls.

Sec. 86-361. Financial Guarantee.

- (1) The City shall not approve a stormwater permit until the developer submits to the City, in a form and amount satisfactory to the City, a letter of credit or other financial guarantee for the timely and satisfactory construction of all stormwater management facilities and site grading in accordance with the approved drainage plan. Upon 1) certification by a registered professional engineer that the stormwater management facilities have been completed in accordance with the approved drainage plan including, but not limited to, the implementation plan required to be submitted in Section 86-358, and 2) receipt of construction record drawings meeting the minimum requirements of the City or the County Drain Commissioner, the City may release the letter of credit, or other financial guarantee subject to final City acceptance and approval.
- (2) Except as provided in subsection (3), the amount of the financial guarantee shall be \$ [REDACTED], unless the City determines that a greater amount is appropriate, in which case the basis for such determination shall be provided to the developer in writing. In determining whether an amount greater than \$ [REDACTED] is appropriate, the City shall consider the size and type of the development, the size and type of the on-site stormwater system, and the nature of the off-site stormwater management facilities the development will utilize.
- (3) The City may reduce or waive the amount of the financial guarantee for a development that will not increase the percentage of impervious surface of the development site by more than ten percent (10%).
- (4) This chapter shall not be construed or interpreted as relieving a developer of its obligation to pay all costs associated with on-site private stormwater management facilities as well as those costs arising from the need to make other drainage improvements in order to reduce a development's impact on a drain consistent with adopted design standards.

Sec. 86-362. Certificate of Occupancy.

No certificate of occupancy shall be issued until stormwater management facilities have been completed in accordance with the approved drainage plan; provided, however, the City may issue a certificate of occupancy if an acceptable letter of credit or other financial guarantee has been submitted to the City, for the timely and satisfactory construction of all stormwater management facilities and site grading in accordance with the approved drainage plan.

Sec. 86-363. No Change in Approved Facilities.

Stormwater management facilities, after construction and approval, shall be maintained in good condition, in accordance with the approved drainage plan, and shall not be subsequently altered, revised or replaced except in accordance with the approved drainage plan, or in accordance with approved amendments or revisions in the plan.

Sec. 86-364. Terms and Conditions of Permits.

In granting a stormwater permit, the City may impose such terms and conditions as are reasonably necessary to effectuate the purposes of this ordinance. A developer shall comply with such terms and conditions.

DIVISION III. STORMWATER SYSTEM, FLOODPLAIN AND OTHER STANDARDS,
SOIL EROSION CONTROL

Sec. 86-365. Management of and Responsibility for Stormwater System.

The City is not responsible for providing drainage facilities on private property for the management of stormwater on the property. It shall be the responsibility of the property owner to provide for, and maintain, private stormwater management facilities serving the property and to prevent or correct the accumulation of debris that interferes with the drainage function of a water body.

Sec. 86-366. Stormwater System.

All stormwater management facilities shall be constructed and maintained in accordance with all applicable federal, state and local ordinances, and rules and regulations.

Sec. 86-367. Stormwater Discharge Rates and Volumes.

The City is authorized to establish minimum design standards for stormwater discharge release rates and to require dischargers to implement on-site retention, detention or other methods necessary to control the rate and volume of surface water runoff discharged into the stormwater drainage system. These have been published by the City in the document “Stormwater Standards, Procedures & Design Criteria for Stormwater Management” (aka “Stormwater Standards” manual). The standards to address post-construction stormwater runoff apply to all new development and redevelopment projects, including preventing or minimizing water quality impacts. Specific exemptions are listed in the “Stormwater Standards” manual.

Sec. 86-368. Floodplain Standards.

- (1) All new buildings and substantial improvements to existing buildings shall be protected from flood damage up to the Flood Protection Elevation (FPE) and shall be in accordance with all applicable federal, state and local ordinances, and rules and regulations. Floodway alteration in a local floodplain shall be permitted only upon review and approval by the City, in accordance with an approved drainage plan.
- (2) A drainage plan providing for the filling or alteration of a floodway within a local floodplain shall include provisions for maintaining stability of the banks of streams or other water bodies. Establishing buffer zones is one means of providing protection of the slopes and banks of water bodies.
- (3) Within any required buffer zone, no earth change shall take place except in accordance with the approved drainage plan. Such a plan may also include provisions for the replacement of local flood plain storage volume, where such storage volume is lost or diminished as a result of approved development.
- (4) Any earth change within a state-regulated floodplain shall only be undertaken in accordance with any required state or federal permit.

Sec. 86-369. Soil Erosion and Sedimentation Control.

- (1) All persons who cause, in whole or in part, any earth change to occur shall provide soil erosion and sedimentation control so as to adequately prevent soils from being eroded and discharged or deposited onto adjacent properties or into a stormwater drainage system, a public street or right of way, wetland, creek, stream, water body, or floodplain. All development shall be in accordance with all applicable federal, state and local ordinances, rules and regulations.
- (2) During any earth change which exposes soil to an increased risk of erosion or sediment track-out, the property owner and other persons causing or participating in the earth change shall do the following:

- (a) Comply with the stormwater management standards of this ordinance.
- (b) Obtain and comply with the terms of a soil erosion and sedimentation control permit if required by law.
- (c) Prevent damage to any public utilities or services within the limits of grading and within any routes of travel or areas of work of construction equipment.
- (d) Prevent damage to or impairment of any water body on or near the location of the earth change or affected thereby.
- (e) Prevent damage to adjacent or nearby land.
- (f) Apply for all required approvals or permits prior to the commencement of work.
- (g) Proceed with the proposed work only in accordance with the approved plans and in compliance with this chapter.
- (h) Maintain all required soil erosion and sedimentation control measures, including but not limited to, measures required for compliance with the terms of this chapter.
- (i) Promptly remove all soil, sediment, debris, or other materials applied, dumped, tracked, or otherwise deposited on any lands, public streets, sidewalks, or other public ways or facilities, including catch basins, storm sewers, ditches, drainage swales, or water bodies. Removal of all such soil, sediment, debris or other materials within twenty-four (24) hours shall be considered prima facie compliance with this requirement, unless such materials present an immediate hazard to public health and safety.
- (j) Refrain from grading lands at locations near or adjoining lands, public streets, sidewalks, alleys, or other public or private property without providing adequate support or other measures so as to protect such other lands, streets, sidewalks or other property from settling, cracking or sustaining other damage.
- (k) Request and obtain inspection of soil erosion and sedimentation control facilities, by the City at such frequency as required by the City.

Sec. 86-370. Building Openings.

- (1) No building opening or Lowest Floor shall be constructed below the following elevations:

- (a) One foot above the Base Flood Elevation.
 - (b) One foot above the 100-year water surface hydraulic grade line of the stormwater system.
 - (c) One foot above the highest know ground water elevation.
 - (d) The building opening established at the time of plat or development approval and on file with the Local Government.
- (2) A waiver from elevations may be granted by the City following receipt of a certification from a registered professional engineer demonstrating that the proposed elevation does not pose a risk of flooding.
 - (3) Upon completion of construction of the structure's foundation and or slab on grade, a registered land surveyor shall certify any minimum building opening or lowest floor elevation specified by this ordinance. This certificate shall attest that the building opening or Lowest Floor elevation complies with the standards of this chapter. The permittee for the building permit shall submit the certificate to the City Building Inspections official prior to the commencement of framing and/or structural steel placement. If the surveyor should find that the minimum building opening or lowest floor elevation is below the elevation specified in this section, that opening must be raised using a method that meets with the approval of the City. After reconstruction, a registered land surveyor or engineer shall re-certify that the minimum building opening or lowest floor elevation complies with the standards of this ordinance prior to the commencement of framing and or structural steel placement.

Sec. 86-371. Sump Pump Discharge.

- (1) Whenever building footing drains are required or utilized, a direct connection between the footing drains and the storm sewer through a sump pump-check valve system, or a gravity pipe with a double flap gate valve for backflow prevention is required.
- (2) A stormwater lateral shall be provided for each parcel at the time of storm sewer construction. If no lateral is provided, the lot owner shall discharge said water in such a manner as to not impact neighboring land or public streets.
- (3) Water discharged to the storm sewer system via a lateral is not exempted from meeting water quality and channel protection discharge requirements.

Sec. 86-372. Public Health, Safety and Welfare.

Protection of the public health, safety and welfare shall be a primary consideration in the

design of all stormwater management facilities.

DIVISION IV. PROHIBITIONS AND EXEMPTIONS

Sec. 86-373. Prohibited Discharges.

- (1) No person shall discharge to a water body, directly or indirectly, any substance other than stormwater or an exempted discharge. Any person discharging stormwater shall effectively prevent pollutants from being discharged with the stormwater, except in accordance with best management practices.
- (2) The City is authorized to require dischargers to implement pollution prevention measures, utilizing BMPs, necessary to prevent or reduce the discharge of pollutants into the City's stormwater drainage system.

Sec. 86-374. Exempted Discharges.

The following non-stormwater discharges shall be permissible, provided that they do not result in a violation of State of Michigan water quality standards:

- Water supply line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground water
- Uncontaminated ground water infiltration to storm drains
- Uncontaminated pumped ground water
- Discharges from potable water sources
- Foundation drains
- Air conditioning condensate
- Individual residential car washing
- Dechlorinated swimming pool water
- Street washwater
- Discharges or flows from emergency fire fighting activities
- Discharges for which a specific federal or state permit has been issued.

Sec. 86-375. Interference with Natural or Artificial Drains.

- (1) It shall be unlawful for any person to stop, fill, dam, confine, pave, alter the course of, or otherwise interfere with any natural or constructed drain, or drainageway without first submitting a drainage plan to the City and receiving approval of that plan. Any deviation from the approved plan is a violation of this chapter. This section shall not prohibit, however, necessary emergency action so

as to prevent or mitigate drainage that would be injurious to the environment, the public health, safety, or welfare.

- (2) No filling, blocking, fencing or above-surface vegetation planting shall take place within a floodway.
- (3) For an overland flow-way:
 - (a) Silt screen fences shall not be permitted below the top of the bank of a water body.
 - (b) Chain link fences shall be permitted if the City determines that the fence will not obstruct or divert the flow of water.
 - (c) If a fence is removed by the City for drain access or drain maintenance, the fence shall be replaced by the owner of the fence at the owner's expense.
 - (d) No shrubs or trees shall be planted below the top of the bank of a water body.
- (4) Shrubs, trees or other above-ground vegetation shall not be planted over the top of an underground storm sewer or over the top of the easement within which the storm sewer has been installed.

Sec. 86-376. Storage of Hazardous or Toxic Materials in Drainageway.

Except as permitted by law, it shall be unlawful for any person to store or stockpile within a drainageway any hazardous or toxic materials unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a drainageway.

DIVISION V. INSPECTION, MONITORING, REPORTING AND RECORDKEEPING

Sec. 86-377. Inspection and Sampling.

To assure compliance with the standards, the City may inspect and/or obtain stormwater samples from stormwater management facilities of any discharger to determine compliance with the requirements of this ordinance. Upon request, the discharger shall allow the City's properly identified representative to enter upon the premises of the discharger at all hours necessary for the purposes of such inspection or sampling. The City shall provide the discharger reasonable advance notice of such inspection and/or sampling. The City or its properly identified

representative may place on the discharger's property the equipment or devices used for such sampling or inspection.

Sec. 86-378. Stormwater Monitoring Facilities.

A discharger of stormwater runoff shall provide and operate equipment or devices for the monitoring of stormwater runoff, so as to provide for inspection, sampling, and flow measurement of each discharge to a water body or a stormwater management facility, when directed in writing to do so by the City. The City may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling and flow measurement of discharges in order to determine whether adverse effects from or as a result of such discharges may occur. All such equipment and devices for the inspection, sampling and flow measurement of discharges shall be installed and maintained in accordance with applicable laws, ordinances and regulations.

Sec. 86-379. Accidental Discharges.

- (1) Any discharger who accidentally discharges into a water body any substance other than stormwater or an exempted discharge shall immediately inform the City concerning the discharge. If such information is given orally, a written report concerning the discharge shall be filed with the City within five (5) days. The written report shall specify:
 - (a) The composition of the discharge and the cause thereof.
 - (b) The exact date, time, and estimated volume of the discharge.
 - (c) All measures taken to clean up the accidental discharge, and all measures proposed to be taken to reduce and prevent any recurrence.
 - (d) The name and telephone number of the person making the report, and the name of a person who may be contacted for additional information on the matter.
- (2) A properly-reported accidental discharge shall be an affirmative defense to a civil infraction proceeding brought under this chapter against a discharger for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, to obtain recovery of costs or to obtain other relief as a result of or arising out of the discharge. A discharge shall be considered properly reported only if the discharger complies with all the requirements of this section.

Sec. 86-380. Record Keeping Requirements.

Any person subject to this chapter shall retain and preserve for no less than three (3) years any and all books, drawings, plans, prints, documents, memoranda, reports, correspondence and records, including records on magnetic or electronic media and any and all summaries of such records, relating to monitoring, sampling and chemical analysis of any discharge or stormwater runoff from any property.

DIVISION VI. ENFORCEMENT

Sec. 86-381. Sanctions for Violations.

- (1) Any person violating any provision of this ordinance shall be responsible for a municipal civil infraction and subject to a fine of not less than \$ [REDACTED] for a first offense, and not less than \$ [REDACTED] for a subsequent offense, plus costs, damages, expenses, and other sanctions as authorized under Chapter 87 of the Revised Judicature Act of 1961 and other applicable laws, including, without limitation, equitable relief; provided, however, that the violation stated in subsection (2) shall be a misdemeanor. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this ordinance.

For purposes of this section, "subsequent offense" means a violation of the provisions of this ordinance committed by the same person within 12 months of a previous violation of the same provision of this ordinance for which said person admitted responsibility or was adjudicated to be responsible.

The City is authorized to issue municipal civil infraction citations to any person alleged to be violating any provision of this ordinance.

- (2) Any person who neglects or fails to comply with a stop work order issued under the Article shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$500 or imprisonment in the county jail for not more than 93 days, or both such fine and imprisonment, and such person shall also pay such costs as may be imposed in the discretion of the court.
- (3) Any person who aids or abets a person in a violation of this ordinance shall be subject to the sanctions provided in this section.

Sec. 86-382. Stop Work Order.

Where there is work in progress that causes or constitutes in whole or in part, a violation of any provision of this ordinance, the City is authorized to issue a Stop Work Order so as to prevent further or continuing violations or adverse effects. All persons to whom the stop work order is directed, or who are involved in any way with the work or matter described in the stop work order shall fully and promptly comply therewith. The City may also undertake or cause to be undertaken, any necessary or advisable protective measures so as to prevent violations of this ordinance or to avoid or reduce the effects of noncompliance herewith. The cost of any such protective measures shall be the responsibility of the owner of the property upon which the work is being done and the responsibility of any person carrying out or participating in the work, and such cost shall be a lien upon the property.

Sec. 86-383. Failure to Comply; Completion.

In addition to any other remedies, should any owner fail to comply with the provisions of this ordinance, the City may, after the giving of reasonable notice and opportunity for compliance, have the necessary work done, and the owner shall be obligated to promptly reimburse the City for all costs of such work.

Sec. 86-384. Emergency Measures.

When emergency measures are necessary to moderate a nuisance, to protect public safety, health and welfare, and/or to prevent loss of life, injury or damage to property, the City is authorized to carry out or arrange for all such emergency measures. Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this ordinance, and shall promptly reimburse the City for all of such costs.

Sec. 86-385. Cost Recovery for Damage to Storm Drain System.

A discharger shall be liable for all costs incurred by the City as the result of causing a discharge that produces a deposit or obstruction, or causes damage to, or impairs a storm drain, or violates any of the provisions of this ordinance. Costs include, but are not limited to, those penalties levied by the EPA or MDNRE for violation of an NPDES permit, attorney fees, and other costs and expenses.

Sec. 86-386. Collection of Costs; Lien.

Costs incurred by the City and the Drain Commissioner pursuant to this chapter shall be a lien on the premises which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time. Any such charges which are delinquent for six (6)

months or more may be certified annually to the City Treasurer who shall enter the lien on the next tax roll against the premises and the costs shall be collected and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the City or the Drain Commissioner shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended.

Sec. 86-387. Appeals.

Any person as to whom any provision of this ordinance has been applied may appeal in writing, not later than 30 days after the action or decision being appealed from, to the City Construction Board of Appeals the action or decision whereby any such provision was so applied. Such appeal shall identify the matter being appealed, and the basis for the appeal. The Board shall consider the appeal and make a decision whereby it affirms, rejects or modifies the action being appealed. In considering any such appeal, the Board may consider the recommendations of the City Engineer and the comments of other persons having knowledge of the matter. In considering any such appeal, the Board may grant a variance from the terms of this ordinance so as to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

- (1) The application of the ordinance provisions being appealed will present or cause practical difficulties for a development or development site; provided, however, that practical difficulties shall not include the need for the developer to incur additional reasonable expenses in order to comply with the ordinance; and
- (2) The granting of the relief requested will not substantially prevent the goals and purposes sought to be accomplished by this ordinance, nor result in less effective management of stormwater runoff.

DIVISION VII. STORMWATER EASEMENTS AND MAINTENANCE AGREEMENTS

Sec. 86-388. Applicability of Requirements.

The requirements of this Article concerning stormwater easements and maintenance agreements shall apply to all persons required to submit a drainage plan to the City for review and approval.

Sec. 86-389. Stormwater Management Easements.

The developer shall provide all stormwater management easements necessary to implement the approved drainage plan and to otherwise comply with this ordinance in form and substance required by the City and shall record such easements as directed by the City. The easements shall assure access for proper inspection and maintenance of stormwater management facilities and shall provide adequate emergency overland flow-ways.

Sec. 86-390. Maintenance Agreements.

- (1) Maintenance Agreement Required. The developer shall provide all stormwater maintenance agreements necessary to implement the approved drainage plan and to otherwise comply with this ordinance in form and substance as required by the City, and shall record such agreements as directed by the City. The maintenance agreements shall, among other matters, assure access for proper inspection and maintenance or corrective actions of stormwater BMPs, including emergency overland flow-ways, and include provisions for tracking the transfer of operation and maintenance responsibility to ensure the performance standards are met in perpetuity.
- (2) Maintenance Agreement Provisions.
 - (a) The maintenance agreement shall include a maintenance plan and schedule for routine, emergency and long-term maintenance of all structural and vegetative stormwater BMPs installed and implemented to meet the performance standards, with a detailed annual estimated budget for the initial three years, and a clear statement that only future maintenance activities in accordance with the maintenance agreement plan shall be permitted without the necessity of securing new permits.
 - (b) Written notice and submittal of maintenance documentation shall be provided to the City by the property owner at the interval set forth in the maintenance agreement and subject to the provisions of this chapter.
 - (c) If it has been found by the City, following notice and an opportunity to be heard by the property owner, that there has been a material failure or refusal to undertake maintenance as required under this ordinance and/or as required in the approved maintenance agreement as required hereunder, the City shall then be authorized, but not required, to hire an entity with qualifications and experience in the subject matter to undertake the monitoring and maintenance as so required, in which event the property owner shall be obligated to advance or reimburse payment for all costs and expenses associated with such monitoring and maintenance, together with a reasonable administrative fee. The maintenance agreement required under this Ordinance shall contain a provision spelling out the

requirements and, if the applicant objects in any respect to such provision or the underlying rights and obligations, such objection shall be resolved prior to the commencement of construction of the proposed development on the property.

Sec. 86-391. Establishment of County Drains.

Prior to final approval, all stormwater management facilities for platted subdivisions shall be established as county drains, as authorized in Section 433, Chapter 18 of the Michigan Drain Code (P.A. 40 of 1956, as amended) for long term maintenance.

DIVISION VIII. PERFORMANCE AND DESIGN STANDARDS

Sec. 86-392. Performance Standards.

In order to achieve the goals and purposes of this ordinance, the following stormwater management performance standards are hereby established.

- (1) Water Quality Treatment. Treat the calculated site runoff for the entire project site from the 90 percent annual non-exceedance storm, which is approximately equal to 1-inch of rain (i.e. on average, 90 percent of the storms in a given year produce 1-inch of rainfall or less). The treatment volume specified is based on capturing and treating the volume of stormwater that is the first to runoff in a storm and expected to contain the majority of pollutants. This volume of runoff is often referred to as the “first flush.” The water quality treatment standard is required for all sites.
 - (a) Total Suspended Solids (TSS). The methods selected to treat the volume of water calculated for the Water Quality Treatment performance standard shall be designed on a site-specific basis to achieve either a minimum of 80 percent removal of TSS, as compared with uncontrolled runoff, or a discharge concentration of TSS that does not exceed 80 milligrams per liter (mg/l). This performance standard is based on TSS as a surrogate for other pollutants normally found in stormwater runoff. Control of TSS to meet this standard is expected to achieve control of other pollutants to an acceptable level that protects water quality.
- (2) Channel Protection. Maintain the post-development project site runoff volume and peak flow rate at or below pre-development levels for all storms up to the 2-year, 24-hour event. At a minimum, pre-development is defined as the last land use prior to the planned new development or redevelopment. The channel protection standard is required for stormwater discharges to surface waters or the MS4.

- (a) Extended Detention. Detain the portion of the channel protection volume unable to be retained onsite for a minimum of 24-hours with a maximum release rate no greater than the existing 2-year peak discharge, and a drawdown time no greater than 72 hours. A waiver from the City must be granted to use this alternative approach.
- (3) Flood Control. Control the volume of site runoff from the flood control rainfall event with a maximum allowable release rate to reduce the potential for property damage from overbank flooding and preserve existing floodplains. The flood control event and maximum allowable release rate shall be determined by the City. The flood control standard is required for all sites.
- (a) Overflow Routes. Acceptable overflow routes for the 100-year flood shall be identified for the site and for downstream areas between the site and the nearest acceptable floodway or outlet. Stormwater conveyance systems are usually designed to handle flows generated by the 10-year storm. When larger storms generate higher flows, the conveyance system is expected to surcharge resulting in stormwater accumulating on the surface of the ground. Gravity will cause such stormwater to flow overland to lower elevations. By carefully managing the shape of the land surface such overland stormwater flow can be directed to locations that will not cause property damage. Adequate emergency overland flow-ways will direct stormwater flows generated by the 100-year storm to avoid damage to structures and facilities.
- (4) Site-Specific Requirements.
- (a) Pretreatment. Pretreatment of site runoff is required on a site specific basis prior to discharging to certain stormwater BMPs. Pretreatment provides for the removal of fine sediment, trash and debris, and preserves the longevity and function of the BMP.
 - (b) Hot Spots and Groundwater Contamination. Some land use activities have a potentially greater risk of polluted runoff than others. Project sites with these types of activities are referred to as “hot spots” and include used such as gas stations, commercial vehicle maintenance and repair, auto recyclers, recycling centers, and scrap yards. Hot spots also include areas with the potential for contaminating public water supply intakes. Pretreatment of stormwater runoff to address pollutants associated with hot spots is required for the site. Stormwater management strategies and BMPs that reduce the potential to mobilize existing soil and groundwater contaminants, or that capture and treat stormwater runoff and/or accidental spills to protect groundwater or nearby surface waters are required.
 - (c) Coldwater Streams. Stormwater management strategies and BMPs that minimize thermal impacts from site runoff and maximize groundwater

recharge are required for sites with a surface water discharge to a coldwater stream as determined by the Michigan Department of Natural Resources.

Sec. 86-393. Design Standards.

Stormwater BMPs shall be designed to manage stormwater flow within the available capacity of the downstream conveyance system as determined by the City.

In addition, stormwater BMPs shall be designed to meet Performance Standards as described in this chapter. Stormwater system design shall be in accordance with the latest version the “Stormwater Standards” manual published by the City.

Sec. 86-394. Alternative Approach for Channel Protection.

In many cases, infiltration will likely be used as the primary means of retention. It is not, however, the sole means of providing onsite retention, and the developer must include consideration of stormwater reuse, interception, evapo-transpiration, and other vegetative (non-structural) BMPs at the project site. Site constraints that limit the use of infiltration may include:

- (1) Poorly draining soils (<0.24 inches per hour; typically hydrologic soil groups C and D).
- (2) Bedrock.
- (3) High groundwater, or the potential of mounded groundwater to impair other uses.
- (4) Wellhead protection areas.
- (5) Stormwater hot spots.
- (6) Part 201 and Part 213 sites, and areas of soil or groundwater contamination.

The City may grant a waiver of the on-site retention criteria for channel protection described in this chapter, and allow an alternative approach to meet the channel protect performance standard if the developer demonstrates that site constraints preclude sufficient retention onsite. If a waiver is granted, the developer must meet the extended detention criteria in Section 86-392(2)(a) for channel protection.

Sec. 86-395. Off-Site Mitigation and Payment –in-Lieu Program for Redevelopment Projects.

The water quality treatment and channel protection performance standards focus on maintaining or restoring stable hydrology. However, potential physical constraints may limit the

ability to fully meet the post-construction requirement at the project site. When physical constraints limit the feasibility of maintaining or restoring hydrology, offsite mitigation and/or payment-in-lieu may be approved by the City.

Off-site Mitigation refers to BMPs implemented at a location different from the original project site.

Payment-in-Lieu refers to the developer paying a fee to the City that is applied to a public stormwater management project. The stormwater management project may be either a new BMP or a retrofit to an existing BMP and developed in accordance with the “Stormwater Standards” manual.

The location for off-site mitigation and payment-in-lieu projects shall be within the same watershed and sewershed as the original project. The watershed is the area represented by the State of Michigan, DEQ, 10-digit Hydrologic Unit Code. The sewershed is the area where stormwater is conveyed by an MS4 to a common outfall or point of discharge.

The determination to approve off-site mitigation or payment-in-lieu will be based on multiple criteria and not solely on the difficulty or cost of implementing BMPs on site.

Conditions under which the option to move off site would become available may include:

- (1) Limited size of the lot outside of the building footprint to create the necessary infiltration capacity even with amended soils.
- (2) Soil instability as documented by a thorough geotechnical analysis.
- (3) A site use that is inconsistent with capture and reuse of stormwater.
- (4) Too much shade or other physical conditions that preclude adequate use of plants.
- (5) The potential water quality impact from the original project site and the benefits realized at the offsite location.

The City may approve off-site mitigation or payment-in-lieu if the developer demonstrates that site constraints preclude sufficient treatment and restoration of hydrology onsite. At a minimum, the City shall require:

- (1) Offset ratio. The offset ratio for the amount of stormwater not managed onsite in relation to the amount of stormwater required to be mitigated at another site, or for which in-lieu payments will be made is as follows:

- (a) First Tier: Manage a minimum of 0.4 inches of stormwater runoff onsite, and provide a 1 to 1.5 offset ratio for the remaining amount of stormwater managed offsite.
 - (b) Second Tier: If it completely infeasible to manage the minimum onsite, provide a 1 to 2 offset ratio for the amount of stormwater managed offsite.
- (2) Schedule. Offsite mitigation and payment-in-lieu projects shall be completed within 24 months after the start of the original site construction.
 - (3) Assurances. Offset and in-lieu projects shall be preserved and maintained in perpetuity through the procedures and tracking system administered by the City.

Sec. 86-396. Resolution to Implement Performance and Design Standards.

The City Council may adopt a resolution establishing more detailed design and performance standards for stormwater management facilities, consistent with the terms of this ordinance, and in order to further implement its goals and purposes.

DIVISION IX. OTHER MATTERS

Sec. 86-397. Interpretation.

Words and phrases in this chapter shall be construed according to their common and accepted meanings, except that words and phrases defined in Section 86-355 shall be construed according to the respective definitions given in that section. Technical words and technical phrases that are not defined in this chapter but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings.

Sec. 86-398. Catch-Line Headings.

The catch-line headings of the articles and sections of this chapters are intended for convenience only, and shall not be construed as affecting the meaning or interpretation of the text of the articles or sections to which they may refer.

Sec. 86-399. Other Ordinances.

This chapter shall be in addition to other ordinances of the City, and shall not be deemed to repeal or replace other ordinances or parts thereof except to the extent that such repeal is specifically provided for in this chapter.

Section 2. That Article V of Chapter 86 of the Code of the City of Wyoming is hereby repealed.

Section 3. This ordinance shall be in full force and effect on the _____ day of

_____, 2016.

I hereby certify that the above-entitled Ordinance was adopted by the City of Wyoming at a _____ session of the City Council held on the _____ day of _____, 2016.

Kelli A. Vandenberg
Wyoming City Clerk

Ordinance No. _____