



City of Boyne City

Founded 1856

319 N. Lake Street

Boyne City, Michigan 49712
www.cityofboyneccity.com

Phone 231-582-6597
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BOYNE CITY
CITY COMMISSION REGULAR MEETING
Boyne City Hall
319 North Lake Street
Tuesday, October 8, 2019 at 7:00 p.m.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. CONSENT AGENDA
The purpose of the consent agenda is to expedite business by grouping non-controversial items together to be dealt with by one Commission motion without discussion. Any member of the Commission, staff, or the public may ask that any item(s) on the consent agenda be removed and placed as the last item under new business to receive full discussion. Such requests will be automatically respected.
 - A. Approval of the September 23, 2019 City Commission regular meeting minutes as presented
 - B. Approval of a resolution for Charitable Gaming Licenses for the Boyne City Elementary School PTO for their yearly raffle and authorize the City Clerk to complete the resolution
4. HEARING CITIZENS COMMENTS (on non-agenda items; 5 minute limit)
5. CORRESPONDENCE
6. CITY MANAGER'S REPORT
7. REPORTS OF OFFICERS, BOARDS AND STANDING COMMITTEES
 - A. Draft minutes of the September 3, 2019 ZBA Meeting
 - B. Draft minutes of the September 5, 2019 Main Street Board Meeting
 - C. Draft minutes of the September 12, 2019 Parks & Recreation Board Meeting
 - D. Draft minutes of the September 16, 2019 Historical Commission Meeting
 - E. Draft minutes of the September 16, 2019 Planning Commission Meeting
 - F. Draft minutes of the September 26, 2019 Airport Board Meeting
8. OLD BUSINESS
9. NEW BUSINESS
 - A. Storm Water Ordinance
Consideration of first reading of the Storm Water Control Ordinance and schedule a second reading for November 12, 2019.

B. Michigan Avenue and North Lake Street Resurfacing Project – Phase II Contract
Consideration to approve the attached certified resolution approving the contract with MDOT for the Michigan Avenue and North Lake Street Project (Contract No. 19-5469) and further authorize the City Manager and City Clerk/Treasurer to execute the documents.

C. Cyber Insurance Quotation
Consideration to authorize the City Manager and the City Clerk/Treasurer to take the steps necessary to obtain Cyber Insurance for \$1,621 as noted under the quotation from the BCS insurance company for 2019-2020.

10. GOOD OF THE ORDER

11. ANNOUNCEMENTS

- The next regular City Commission meeting is scheduled for October 22, 2019 at noon.

12. ADJOURNMENT



Individuals with disabilities requiring auxiliary aids or services in order to participate in municipal meetings may contact Boyne City Hall for assistance: Cindy Grice, City Clerk/Treasurer, 319 North Lake Street, Boyne City, MI 49712; phone (231) 582-0334

**SEPTEMBER 23, 2019
REGULAR MEETING**

RECORD OF THE PROCEEDINGS OF THE REGULAR BOYNE CITY COMMISSION MEETING DULY CALLED AND HELD AT BOYNE CITY HALL, 319 NORTH LAKE STREET, ON MONDAY SEPTEMBER 23, 2019

CALL TO ORDER

Mayor Neidhamer called the meeting to order at noon followed by the Pledge of Allegiance.

Present: Mayor Tom Neidhamer, Mayor Pro-Tem Grunch, Commissioners Hugh Conklin, Sally Page and Dean Solomon

Absent: None

Staff: Cindy Grice, Michael Cain, Scott McPherson, Mark Fowler, Tim Faas, Kevin Spate and Jeff Gaither

Others: There were 4 citizens in attendance.

**CONSENT AGENDA
MOTION**

2019-09-118
Moved by Conklin
Second by Page

Approval of the September 10, 2019 City Commission regular meeting minutes as presented

Approval to reappoint Bob Carlile to the Compensation Commission for a five year term expiring 10/1/2024

Approval to appoint George Ellwanger to the Compensation Commission for a four year term expiring 10/1/2023

Ayes: 5
Nays: 0
Absent: 0
Motion carried

CITIZENS COMMENTS

Mike Sheean presented a check to the City of Boyne City from the Top of Michigan Trails Council in the amount of \$30,000 to help fund the Boyne City to Boyne Falls bike trail. The Commissioners expressed their appreciation for the generosity.

CORRESPONDENCE

None

**CITY MANAGERS
REPORT**

City Manager Cain reported:

- The cleaning and repainting of the marina lighthouse is now complete.
 - Construction project updates were provided.
 - Chief of Police applications are due the end of this week.
 - Four members of the Leadership Charlevoix County class are in the audience
 - The road salt has been delivered
 - Lofts on Lake plan to tear down the existing buildings in early spring of 2020
-

**REPORTS OF
OFFICERS, BOARDS
AND STANDING
COMMITTEES**

The August, 2019 Financial Statement was received and filed.

Tree Planting Contract

Consideration to approve a purchase order contract with Robinson's Landscaping and Nursery, Inc. in an amount not to exceed \$38,070 and authorize the City Manager to execute the documents

Director of Public Works Tim Faas discussed the bids for the annual tree planting along the right of ways. 87 trees are going to be planted. Two bids were received. Robinson's Landscaping and Nursery was the lowest bidder.

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the request.

MOTION

2019-09-119

Moved by Conklin

Second by Solomon

To approve a purchase order contract with Robinson's Landscaping and Nursery, Inc. in an amount not to exceed \$38,070 and authorize the City Manager to execute the documents

Ayes: 5

Nays: 0

Absent: 0

Motion carried

**Dog Park Agility Area
Fence Purchase
Recommendation**

Consideration to approve a purchase order contract with the Harbor Fence Company of Petoskey MI in an amount not-to-exceed \$10,912 for the Ridge Run Dog Park agility area and authorize the City Manager to execute the documents.

Director of Public Works Tim Faas discussed the successful fundraising for the agility area of the dog park planned to be installed on the south side of Ridge Road, west of the small dog area. The cost for the supply and installation of fence is \$10,912.

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the request.

MOTION

2019-09-120

Moved by Conklin

Second by Solomon

To approve a purchase order contract with the Harbor Fence Company of Petoskey MI in an amount not-to-exceed \$10,912 for the Ridge Run Dog Park agility area and authorize the City Manager to execute the documents

Ayes: 5

Nays: 0
 Absent: 0
 Motion carried

**Community Foundation
 Grant Application – Dog
 Park Storage Shed**

Consideration to allow City staff to submit a grant application in the amount of \$3,000 to the Charlevoix County Community Foundation and authorize the City Manager to accept and sign the grant agreement if we are approved for funding.

Barb Brooks discussed the request for approval to submit a grant application to the Charlevoix County Community Foundation to provide funds for construction of a storage shed for the Ridge Run Dog Park

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the request.

MOTION

2019-09-121
 Moved by Conklin
 Second by Grunch

To allow City staff to submit a grant application in the amount of \$3,000 to the Charlevoix County Community Foundation and authorize the City Manager to accept and sign the grant agreement if we are approved for funding

Ayes: 5
 Nays: 0
 Absent: 0
 Motion carried

Match on Main Street

Consideration to approve the Match on Main grant application to benefit the Outdoor Beerdsman shop at 118 Water Street in an amount of up to \$15,924 and authorize the City Manager to execute the documents

City Manager Michael Cain discussed the Michigan Main Street grant program called Match on Main. The grant program provides new or expanding businesses funds toward the new business or expansion when it is activating vacant space. Ivette Lopez of Outdoor Beerdsman worked with Boyne City to apply for her expansion of 118 Water Street for the Hoppy Hound Coffee Company Business. The grant award is for \$15,294 and is actually awarded to Boyne City Main Street as we are the pass thru from the MEDC to the business. The grant agreement needs to be approved for this transaction to take place. No grant funds will remain with Boyne City Main Street but will be passed thru to Ivette and Hoppy Hound. This is a great way for us to partner with Michigan Main Street to support small businesses in our downtown.

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the grant request.

MOTION

2019-09-122

Moved by Grunch

Second by Solomon

To approve the Match on Main grant application to benefit the Outdoor Beerdsman shop at 118 Water Street in an amount of up to \$15,924 and authorize the City Manager to execute the documents

Ayes: 5

Nays: 0

Absent: 0

Motion carried

**Back to the Bricks 2020
Promo Tour**

Consideration to approve the invitation to become a host city for the Back to the Bricks 2020 Promo Tour on Sunday, June 7th, 2020 for an estimated 350 vehicles and accept the Memorandum of Understanding.

City Manager Michael Cain discussed the Back to the Bricks Promo Tour. The tour takes place each summer and stops in five cities in Michigan for a large car show and to promote the Back to the Bricks car show that takes place in Flint. The tour is expected to bring 350 cars with 700 people to downtown on Sunday June 7th. A street closure will be submitted prior to the event. This tour stopped in Boyne City in 2018 and is a very high quality event. This event has support from Boyne City Main Street.

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the request

MOTION

2019-09-123

Moved by Solomon

Second by Page

To approve the invitation to become a host city for the Back to the Bricks 2020 Promo Tour on Sunday, June 7th, 2020 for an estimated 350 vehicles and accept the Memorandum of Understanding.

Ayes: 5

Nays: 0

Absent: 0

Motion carried

**Police Department
Computer Security**

Consideration to approve a contract with Common Angle to provide a Monthly Vertex Network Support Agreement and a Monthly vigilant Security-as-a-Service Threat Analysis Agreement for \$598 per month along with a new Firewall for \$697 and a one-time Vertex

Network Management setup charge of \$810 and authorize the City Manager to execute the documents.

Police Chief Jeff Gaither said the police department keeps a high volume of confidential records and is required by the FBI to provide a high level of protection to those records. After our recent LEIN audit, we were told we did not have sufficient protections and monitoring capabilities. Since then, we met with two new IT providers as well as our current one. Common Angle, an IT support company from Petoskey provided a comprehensive proposal that included the CJIS (FBI Criminal Justice Information System) protections as well as IT support. This is definitely something that should be considered for the future but we do not have the funds budgeted this year. They will, however provide the services that will get us compliant with the LEIN audit and therefore, not lose our access to LEIN which is critical to police operations.

The cost of the services to monitor and detect problems will be a monthly charge of \$599 and was not budgeted. Common Angle's proposal includes a one time set up fee of \$810 and a new firewall for \$679. It then begins billing the \$598 per month for the Security-as-a-Service Agreement and Vertex Network Support Agreement which is required by CJIS and LEIN. Common Angle will also provide any other IT support at \$115 per hour. If we contract with them for these items, they will install programs on our computer so that most of the issues can be resolved by them remoting in on our computers so they don't have to be on site which could save money. The first month billing will be \$2,087 and then \$598 per month after.

Staff Comments: None

Citizens Comments: Scott VanHuis asked if this company is prepared for when the next shoe drops and was informed yes, they will stay ahead of issues. Scott also said this is a very reasonable cost for this protection.

Board Discussion: All are in agreement with the proposal.

MOTION

2019-09-124

Moved by Conklin

Second by Page

To approve a contract with Common Angle to provide a Monthly Vertex Network Support Agreement and a Monthly vigilant Security-as-a-Service Threat Analysis Agreement for \$598 per month along with a new Firewall for \$697 and a one-time Vertex Network Management setup charge of \$810 and authorize the City Manager to execute the documents

Ayes: 5

Nays: 0

Absent: 0

Motion carried

**Marina Expansion
Permit**

Consideration to authorize the City Manager to sign and submit the required documents to accept the USACE marina expansion permit agreement.

Harbormaster Barb Brooks stated that in January of 2019 the City submitted a joint permit application to the United States Army Corp of Engineers (USACE) and Environment, Great Lakes and Energy (EGLE) for a proposed marina expansion project. A similar application was submitted and approved approximately five years ago and has since expired. Renewal of the permit on file was not an option and a new application was required.

EGLE approved the project and issued their permit earlier this summer and USACE provided a permit agreement for us to review in late July. Staff and the City's engineering firm reviewed the proposed agreement and there have not been any concessions proposed by the agency that would change our original project proposal. There was only one section that we felt could use some additional language and our engineer provided that language.

A permit is required in order to make any additional to dock structures within the marina. The new section of floating wave attenuator that was installed during the fall of 2018 was completed under the old permit before it expired. No additional work to it can take place until the new permit is issued. If we accept this permit at this time, a new application would have to be submitted at a later date to start the process over.

MOTION

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the proposal

2019-09-125
Moved by Page
Second by Grunch

To authorize the City Manager to sign and submit the required documents to accept the USACE marina expansion permit agreement.

Ayes: 5
Nays: 0
Absent: 0
Motion carried

**Marina Rates 2020
Season**

Consideration to adopt the DNR marina rates using "Rate 2" for seasonal and "Rate F" for transient, effective immediately for use during the 2020 Boating Season

Harbormaster Barb Brooks The marina rate discussion and request would normally come to you for discussion during budget discussions and adoption shortly after, prior to our season starting on May 15. Due to the fact we are now on the State's central

reservation system (CRS), customers may make their reservations 6 months prior to the arrival date; which means they will be booking in December for May, January for June, etc. Lead time is required by the CRS team to input information for all of the State and “grant-in-aid” harbors across the State so they are requesting that we supply them with our seasonal and transient rates before the end of September.

The rate schedule for both transient and seasonal have been tweaked by DNR staff. While they opted to not increase their rates since 2014, they have made some adjustments for 2020 to add some additional tiers so there were not drastic jumps from one tier to another. “Rate 3” for seasonal and “Rate E” for transient are very close to what we charged in 2019. The main differences are a discount for our seasonal customers who paid with cash or check instead of credit card as we are currently set up that we have to absorb the processing fees and we also had a slightly lower rate for boats 23’. Considering our increasing operational costs, the need to address some larger maintenance items and upgrades and our proposed expansion plans; an increase in rates should be considered. Moving from transient “Rate E” up to “Rate F” and seasonal “Rate 3” up to “Rate 2” would be just under a 9% increase. Seasonal boater cash/check payment discounts and a lower rate for smaller boats can still be offered if we choose. Charlevoix has traditionally charged the same transient rate as us but a much higher seasonal rate. East Jordan has always been a tier below us in both seasonal and transient and Petoskey has used similar transient rates but lower seasonal rates. Communities all base their rates by the amount of demand and revenue needs. Boaters base their choice of marinas on the location, condition of the facility and the service they receive more so than the price. DNR rate schedules from 2018 thru 2020 were provided.

Staff Comments: None

Citizens Comments: None

Board Discussion: All are in agreement with the Harbormaster’s request

MOTION

2019-09-126

Moved by Grunch

Second by Page

To adopt the DNR marina rates using “Rate 2” for seasonal and “Rate F” for transient, effective immediately for use during the 2020 Boating Season.

Ayes: 5

Nays: 0

Absent: 0

Motion carried

**GLOCK PISTOL
PURCHASE**

Consideration to purchase new Glock pistols by the Police Department for a total cost of \$2,106 including the trade-in from

CMP Distributing, using donated funds and authorize the City Manager to execute the documents.

Police Chief Jeff Gaither recently conducted inspections of his department's duty pistols and determined that we need to replace springs and the 3 magazines for each gun. After looking into the costs of these updates, we obtained a price for new guns to see if it made sense economically to replace the guns instead. The new guns come with 3 magazines each. The total amount paid after the trade-ins is \$2,106 and will be paid by money raised and donated to the department.

Staff Comments: None

Citizens Comments: None

Board Discussion: Commissioner Conklin inquired if the pistols should have been a normal budgeted item rather than using donated funds for this purchase

MOTION

2019-09-126
Moved by Grunch
Second by Page

To purchase new Glock pistols by the Police Department for a total cost of \$2,106 including the trade-in from CMP Distributing, using donated funds and authorize the City Manager to execute the documents

Ayes: 5
Nays: 0
Absent: 0
Motion carried

Good Of The Order

Commissioner Solomon said it is fun to be able to work thru an agenda for positive things.

ADJOURNMENT

Motion by Mayor Neidhamer, second by Commissioner Solomon to adjourn the Regular City Commission meeting of Monday, September 23, 2019 at 1:38 p.m.

Tom Neidhamer
Mayor

Cindy Grice
Clerk/Treasurer

BCES PTO

EIN 45-4410472

ATTN: Alaina Farrington

930 Brockway Ave

Boyne City, MI 49712

231-340-0355

October 1, 2019

RE: Resolution Request for Charitable Gaming

The Boyne City Elementary School PTO is a non profit, 501(3)c , that is requesting your approval for resolution for Charitable Gaming license. Every year, the BCES PTO raises money through our raffle to support our yearly expenses. These expenses include, but are not limited to, field trips, teacher grants, principle fund, teacher appreciation week, playground equipment and supplies, spring carnival and more. To help keep the cost low for our students to sell tickets , we price them at \$5 a ticket or 5 tickets for \$20. The prizes are 1st place \$1,000 2nd place \$750 3rd place \$500 4th \$250. The person that sells a winning ticket also receives a prize. They are as follows, 1st place \$500 2nd place \$375 3rd place \$250 and 4th place \$125. We thank you for your help in making this year's raffle a success for our school and students.

Sincerely,

A handwritten signature in cursive script that reads "Alaina Farrington".

Alaina Farrington

PTO President



Charitable Gaming Division
 Box 30023, Lansing, MI 48909
 OVERNIGHT DELIVERY:
 101 E. Hillsdale, Lansing MI 48933
 (517) 335-5780
 www.michigan.gov/cg

LOCAL GOVERNING BODY RESOLUTION FOR CHARITABLE GAMING LICENSES
 (Required by MCL.432.103(K)(ii))

At a _____ meeting of the _____
REGULAR OR SPECIAL TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD

called to order by _____ ON _____
DATE

at _____ a.m./p.m. the following resolution was offered:
TIME

Moved by _____ and supported by _____

that the request from Boyer City Elementary School PTO of Boyer City,
NAME OF ORGANIZATION CITY

county of _____, asking that they be recognized as a
COUNTY NAME

nonprofit organization operating in the community for the purpose of obtaining charitable

gaming licenses, be considered for _____.
APPROVAL/DISAPPROVAL

APPROVAL

DISAPPROVAL

Yeas: _____

Yeas: _____

Nays: _____

Nays: _____

Absent: _____

Absent: _____

I hereby certify that the foregoing is a true and complete copy of a resolution offered and

adopted by the _____ at a _____
TOWNSHIP, CITY, OR VILLAGE COUNCIL/BOARD REGULAR OR SPECIAL

meeting held on _____
DATE

SIGNED: _____
TOWNSHIP, CITY, OR VILLAGE CLERK

PRINTED NAME AND TITLE

ADDRESS

COMPLETION: Required.
 PENALTY: Possible denial of application.
 BSL-CG-1153(R6/09)

Approved: _____

**Meeting Of
September 3, 2019**

Record of the proceedings of the Boyne City Zoning Board of Appeals meeting held at Boyne City Hall, 319 N. Lake Street, on Tuesday, September 3, 2019 at 5:00 p.m.

Call To Order

Chair Kubesh called the meeting to order at 5:00 p.m.

Roll Call

Present: Bob Carlile, Pat Kubesh, Roger Reynolds and Monica Ross
Absent: John McClorey (arrived at 5:38 pm)

Meeting Attendance

City Officials/Staff: Assistant Planning and Zoning Administrator Patrick Kilkenny and Recording Secretary Pat Haver
Public Present: Two

**Approval of the Minutes
MOTION**

ZBA 2019-9-3-2
Carlile moved, Reynolds seconded, PASSED UNANIMOUSLY, a motion to approve the May 7, 2019 meeting minutes as presented.

**Hearing Citizens Present
Correspondence(s)**

None

New Business

**Variance Request
419 E. Lincoln St.
David & Marcella Hill**

Public Hearing opened at 5:01 pm

Assist Zoning Administrator Patrick Kilkenny reviewed his staff report that was included in the agenda packet. The applicant is requesting a two inch (2") side yard setback, or four feet ten inches (4'10") of relief from the required five foot (5') setback from the side lot line. The parcel is approximately 11,434 sq. ft and is in the TRD zoning district, and immediately west of the property the alley was vacated in 2017 with 8.25 ft. given to this property along with the property just west of the vacated alley. The topography shows gradual sloping from south to north and the applicant's drain field and septic tank are in the back yard of the property.

Dawn Behling: 519 Grant St. – I'm here to get an idea of what this request is for and how it will affect my property. She was advised that homeowners within 300 feet of a variance request gets notification. She had concerns as her property backs up to the side yard of this parcel due to the vacation of the alley back in 2017. She had a survey done shortly after the vacation, and the stakes are still standing.

Public Hearing closed at 5:09 pm

Board Discussion

The board had concerns about the lack of detail given to them to make an educated decision as the applicant is not in attendance tonight to answer questions. What would the ramifications be if they were to shift the 8.25 ft from the 409 E. Lincoln St. property to 419 in order to make the lot big enough so a variance was not required? Kilkenny was not sure if that option was even possible legally, but could check into it. It was brought up that the legal description as given on the application does not indicate the additional feet given to both

properties at the vacation of the alley between them in 2017. Even with the knowledge that the plat maps and aerials can be up to 30 feet off, they wanted clarification of when the parking pad for the carport was put in and was it done without the knowledge of the city, as it appears to sit in the middle of the vacated alley, did the applicant consider “single stacking” the cars under the carport, or a possible lot reconfiguration of both of the properties that they own 409 & 419? Do they have a survey that can accurately indicate to us the placement of the house, parking pad, driveway, shed and drain field?

Kilkenny indicated that some of these questions are a moot point as they are not a part of the application before the board, the relief is the only thing that can be considered tonight. A lot reconfiguration must meet all of the zoning ordinance standards, and it is unknown if the lot at 409 could even be reduced in size as it may already be a non-conforming lot. Questions were brought up that if the neighboring property were ever sold, would the prospective buyer be able to get bank financing, if a reconfiguration was done on it. With the information the board has before them tonight, possibly table the discussion until next month and give the applicant an opportunity to be in attendance and/or provide some additional information.

Marcella Hill: applicant and owner of 419 E. Lincoln St. and 409 E. Lincoln St. arrived at 5:21 pm and heard some of the boards concerns. They do own the neighboring property, and there is only 21 feet from the side yard lot line, so if they reconfigured the lots and took 5 feet from that one, it would leave them only 16 ft. in order to put a possible covered carport on that property as well. There is no other spot on either parcel to put up a carport that is level and suitable. The entire back yard of our house (419) is taken up by our drain field and septic tank, we do have a small tool shed in the back corner of the property. I’m not sure how to get the additional information you are looking for, can we use the survey markers that are still up from my neighbor’s survey? Do I take pictures of the corner markers or do we have to get a survey? The board gave her a few suggestions that would possibly help her application; get a survey of both parcels, or at least get confirmation of the front corner markers on both parcels, check with the city to see if a lot reconfiguration can be done as the 409 property may be an existing non-conforming lot; check with staff to see if the possibility of putting all of the 16.5 ft from the vacated alley on parcel 419 and nothing on 409? **Kilkenny** - continued to stress to the board that there was nothing in the application indicating the inclusion of 409 E. Lincoln St. so that was not an option for the board to consider tonight.

The board asked if by tabling the decision until next month would it give the applicant time to amend their application request, give them time to gather the additional information, obtain a survey or consider a lot reconfiguration or completely withdraw their application. Marcella Hill indicated that yes it would help and she will get with staff to discuss options

McCloyey arrived at 5:38 pm

MOTION

After board discussion, **motion by Kubesh, seconded by Ross** to table the variance application until next month in order for the applicant to provide a survey or evidence of the corner stakes of both properties, consider the possibility of a lot reconfiguration and get with staff to check to see what the legality of taking the entire 16.5 ft from the alley vacation and giving it all to the 419 E. Lincoln St. property.

2019-9-3-5A.

Roll Call

Aye: Carlile, Kubesh, McClorey, Reynolds and Ross

Nay: None

Abstain: None

Absent: None

Motion Carries

**Old Business and
Reports of Officers, Boards
and Standing Committees**

None

Good of the Order

Monica Ross will be unavailable for the October meeting

Announcements

The next meeting of the Boyne City Zoning Board of Appeals is scheduled for October 1, 2019 at 5:00 p.m.

**Adjournment
MOTION**

ZBA 2019-9-3-10

Carlile moved, Ross seconded, PASSED UNANIMOUSLY a motion to adjourn the Tuesday, September 3, 2019 Boyne City Zoning Board of Appeals meeting at 5:43 p.m.

Pat Kubesh, Chair

Pat Haver, Recording Secretary



Approved: _____

Meeting of September 5, 2019 MINUTES OF THE BOYNE CITY MAIN STREET BOARD REGULAR MEETING HELD ON THURSDAY, SEPTEMBER 5, 2019 at 8:30 AM CITY HALL, 319 NORTH LAKE STREET

Call to Order Chair Chris Bandy called the meeting to order at 8:31 a.m.

Roll Call Present: Jodie Adams, Chris Bandy, Michael Cain, Michelle Cortright, Patti Gabos, Becky Harris, Patrick Little, Pat O'Brien and Rob Swartz Little arrived at 8:41 am.

Meeting Attendance Absent: None
 City Staff: Main Street Director Kelsie King-Duff, Recording Secretary Jane Halstead, Assistant Planner Patrick Kilkenny, Main Street Assistant Ingrid Day

Public: Three

Approval of Minutes MOTION **Cortright moved, O'Brien seconded**, to approve the August 1, 2019 minutes as presented.

Correspondence An invitation to the retirement party for Maureen Radke of the Charlevoix County Community Foundation was received.
 An invitation to the open house to celebrate the 50th Anniversary of Harbor House Publishers was received and included in the agenda packet.

Committee Reports **Organization Committee**
 Minutes were received and filed. Boyne Thunder financials are being worked on and Team Boyne will begin visiting businesses soon. Downtown snow removal was much improved this year.
 Planning Director Scott McPherson addressed the Board and provided an update on the parking ordinance changes that are being considered. Annaka Norris of Cambourne Consulting was in Boyne City recently to review our current standards. It has been recommended that the City use a parking generation ratio which will significantly reduce the amount of required parking in the downtown core. Recommendations also include allowing a developer or business owner to pay an in lieu fee of \$4,000 per parking space to the City if they cannot supply the number of spaces required. The Planning Commission has recommended that Staff develop ordinance language to implement the recommendations. A public hearing will be held.

Promotions/Marketing Committee

Minutes were received and filed. Upcoming events include Harvest Fest, Earlier than the Bird and the Santa Parade.

Design Committee

Minutes were received and filed. Kelsie King-Duff is working with Tim Faas to determine work that needs to be done on the downtown streetscape. The plans for the Clock Tower repair continue to be worked on. Michael Cain is working with CMS Energy to put the utility lines on Lake Street and in Veterans’ Park underground.

Economic Vitality/Team Boyne

Minutes were received and filed. Dana Kollwehr, a representative from Michigan Main Street was on hand to give a presentation on business development and retention. She placed a strong emphasis on the retention of businesses. Team Boyne is making plans to visit our downtown businesses to see if they can provide any resources or be of assistance.

Director’s Report

Received and filed. Please note that representatives from Michigan Main Street will be here Wednesday September 11th at 8:00 a.m. for their check-in visit.

Unfinished Business

Michigan Main Street Contract

Michigan Main Street Contract

We have not received the contract as of yet. This item will be delayed until the meeting next month.

New Business

Informational Meeting

Informational Meeting

P.A. 57 of @018 Sec. 910 (4) requires that the Downtown Development Authority meet semi-annually for an informational meeting to inform the public of the goals and direction of the authority, including projects undertaken. This meeting meets that requirement.

Farmers Market Recommendation

Farmer Market Recommendation

Authorization to have the Farmers Market Committee Chair and Vice Chair work with the Organization Committee on drafting a new policy/roles & responsibility document for the Farmers Market Committee.
The Organization Committee wants to provide support to the farmers market and the farmers market manager. The goal is to help develop updated operational documents and bring them back to the Main Street Board for approval.

MOTION

Cain moved, Cortright seconded, PASSED UNANIMOUSLY to authorize the Farmers Market Committee Chair and Vice Chair work with the Organization Committee on drafting a new policy/roles & responsibility document for the Farmers Market Committee.

Financial Report Review

The Financial Report was received and filed.

Good Of The Order

- The City has an executed contract from MEDC for the Pavilion project for \$408,415. The updates to the Pavilion will include a commercial kitchen, heating, and two new picnic areas. City Manager Cain met with the architect and contractor and the project is expect to start October 1st.
- Pavement marking is taking place throughout the City.
- Water Street is currently torn up for the purposes of installing a fire suppression line at the Wine Emporium building.
- Cortright shared some information from an article on diversity. Teams/boards with cognitive diversity make better decisions.
- On September 20th from 1:00 to 6:00 pm, Harbor House will host an open house to celebrate their 50th anniversary.
- Thank you to all the volunteers who have made this summer's events a success.
- The Triathlon went very well. There were just under 300 participants.
- Patrick Little reported that school is off to a great start. They have seen positive growth with 74 new students in the school system. Next year school will start on the Tuesday before Labor Day.
- Thursday, September 13th is the Chamber of Commerce golf-outing.
- The Flywheeler Business-After- Hours will be held on Tuesday, September 17th.
- The Business Expo is going to be held at the High School this year. The Taste of Boyne will be a separate event in April.
- Kudos to the Marina Staff for doing a great job this summer.

Pat O'Brien left the Main Street Board meeting at 9:25 a.m.

Motion to go into Closed Session MOTION

Cain moved, Swartz seconded, PASSED UNANIMOUSLY to go into closed session regarding Attorney/Client Privilege document as provided in MCL 15.268 (h) of the Michigan Open Meetings Act (PA 267 of 1976) at 9:39 a.m.

Motion to Exit the Closed Session MOTION

Cain moved, Little seconded, PASSED UNANIMOUSLY to exit the closed session and return to open session at 10:03 a.m.

Adjournment

Cain moved, Swartz seconded, PASSED UNANIMOUSLY to adjourn the September 5, 2019 meeting of the Boyne City Main Street Board at 10:04 a.m.

Jane Halstead, Recording Secretary



Approved:

**Meeting of
September 12, 2019**

RECORD OF THE PROCEEDINGS OF THE **REGULAR BOYNE CITY PARKS AND RECREATION COMMISSION MEETING** HELD AT 5:00 P.M. AT CITY HALL ON THURSDAY, SEPTEMBER 12, 2019.

Call to Order

Meeting was called to order by Chair Mike Sheean at 5:00 p.m.

Roll Call

Present: Mike Sheean, Diane Sterling, Hugh Conklin, and Lisa Alexander

Absent: Jo Bowman, Greg Vadnais, Gow Litzenburger, and Rob Weick

Meeting Attendance

City Staff: DPW director Tim Faas

Public Present:

Excused Absences

No Action – Lack of Quorum

Approval of Minutes

No Action – Lack of Quorum

**Citizens Comments
(on non-agenda items)**

None

Director's Report

Faas provided a written update in the agenda packet and also added the following:

- Staff has been working with TOMMBA on agreement for trail development. A contractor has been secured to assist with ball field work
 - Archery targets at Avalanche will be collected and stored for winter
 - RFPs for Avalanche and Open Space have been issued and due in October.
 - Discussion regarding trail signage for Avalanche. Faas reported that as soon as there is a preliminary plan / layout for board to review soon.
 - Tennis / pickleball courts at Rotary Park are still slated to be resurfaced yet this fall.
-

Correspondence

None

**Reports of Officers,
Boards, and Standing
Committees**

Park Inspection Reports –

- Avalanche: several trees down at Avalanche on the walking trail. Concerns regarding signs that are promoting TOMMBA. Discussion regarding advertising and sponsorship and signage policy.
- Rotary Park – trash and bathroom doors need attention but otherwise looks good. Suggestion of way-finding signage to better mark fields and walking areas.

- Veterans Park boat launch – consider widening the approach and straightening now that the tree is gone.

User Groups –

- Softball / baseball user group: Discussion regarding diamond dust and using a professional to consult before money is spent. Consider online scheduling for all fields for user groups to view and sign up.

Unfinished Business

Resignation of Jo Bowman

No Action – Lack of Quorum

Election of Chair and Vice Chair

No Action – Lack of Quorum

New Business

Dog Park Agility Area Charlevoix County Community Foundation Grant Application

Dog Park committee representative Michele Carter shared with the board that the agility field is ready to start moving forward due to a generous donation from a dog park user of \$10,000 and a donation of used artificial turf. The fencing quote from Harbor Fence for just over \$10,000. City staff will be able to prep and grade the site so it is ready for fencing and turf in the spring. One item that will be needed to prior to purchasing equipment is a storage shed. The committee is requesting the City apply for a Charlevoix County Community Foundation grant to assist with the cost of the storage shed. The committee will continue to fundraise to purchase some of the other items needed and the agility equipment. No action was taken due to lack of quorum but the general consensus of the board was to move forward with project and apply for the grant.

Appoint New Board Member to Fill the Vacancy left by Jo Bowman

No Action – Lack of Quorum

Adjournment

No Action – Lack of Quorum

Barb Brooks, Recording Secretary

BOYNE CITY HISTORICAL COMMISSION

Minutes of September 16, 2019
7:00 p.m.
Boyne City Hall

CALL TO ORDER: 7:01 p.m.

PRESENT: Hewitt, Dawson, Sansom, Barden and Alexander

ABSENT: Raycraft

GUESTS: None

APPROVAL OF MINUTES: Approval of the minutes from the June 17, 2019 meeting, motioned by Dawson, second by Alexander, all ayes.

OLD BUSINESS:

Review of the Heritage Board Open House that was held back in June.

NEW BUSINESS:

1. Barden gave an update from the Heritage Board. They had lost 3 board members in the past couple of months but were fortunate to find replacements. New President is Kecia Freed, Vice President is Gow Litzenburger. New members are Ingrid Day, Julie & Larry Taylor. Collections committee duties, find key items to be used for permanent display. Communication continues to be a struggle with Heritage board and Historical Commission.
2. Storage discussion, we are in agreement that we have storage here at city hall once the museum space is cleared out.
3. Discussion of special meeting dates for the upcoming meeting Sept. 30 or Oct. 15th with City Commission, Heritage Board and Historical Commission. Will update board as soon as the date is determined. Board discussed the upcoming meeting and its intent. We agreed to meet again to have discussion points for upcoming meeting. Hewitt to contact Michigan Museum Association for some guidance.
4. Handed out copies of Heritage Board minutes.

CITIZENS COMMENTS

None

COMMUNICATIONS

None

Next Meeting: Special Meeting September 23, 2019 7:00 pm

Adjourned: 8:45 p.m.

Approved:

**Meeting of
September 16, 2019**

Record of the proceedings of the Boyne City Planning Commission meeting held at Boyne City Hall, 319 North Lake Street, on Monday September 16, 2019 at 5:00 pm.

Call to Order

Chair Place called the meeting to order at 5:00 p.m.

Roll Call

Present: Larry Chute, George Ellwanger, Monica Kroondyk, Skylar MacNaughton, Rose Newton, Aaron Place and Jeff Ross
 Absent: Tom Neidhamer (arrived at 5:17 pm)
 Vacancy: One

Meeting Attendance

City Officials/Staff: Planning and Zoning Administrator Scott McPherson and Recording Secretary Pat Haver
 Public Present: One

- Welcome Monica Kroondyk to the commission. She brings years of planning experience from her previous position with Evangeline Township.
 - Effective immediately, Joe St. Dennis has resigned from the commission. We greatly appreciate his 29 years of service, wisdom and knowledge to the community and on this board, he will be missed.
 - Tom Neidhamer will be in attendance at tonight’s meeting, however, will be a little late
-

**Consent Agenda
Motion

2019-9-16-03
Ross moved, Ellwanger seconded, PASSED UNANIMOUSLY, a motion to approve the consent agenda, the Planning Commission minutes from August 19, 2019 as presented.

**Citizen comments on
Non-Agenda Items**

**Reports of Officers,
Boards and Standing
Committees**

None

Unfinished Business

New Business

**Proposed Zoning
Ordinance
Amendments to Reduce
Housing Barriers**

Planning Director Scott McPherson reviewed his report that was included in the agenda packet. This information is a result of a number of proposed amendments to eliminate or reduce barriers to the development of future housing discussed in June of this year. It is being brought back tonight as we have new members appointed to the board since that meeting, for a final review prior to holding a public hearing. Particular sections that had amendments proposed are Article I – definition updates, Article IV – proposed amendments would allow accessory dwellings and duplex’s as a use by right and permit multiple family units with a maximum of 4 units as a conditional use in the TRD; the board asked about also adding this to the RED district as well. Staff will look into adding similar language as requested. Article VII Manufactured Housing Development District (MHDD) majority of the changes were in terminology from Manufactured Housing Park to Manufactured Housing Development; clarify the Open Space requirement language, and allowing maximum density of 10 units per acre. Article X would eliminate setback requirements for apartment buildings in the CBD district and would permit dwellings on the ground floor of mixed use developments, which must be located in the rear of the

commercial uses with separate pedestrian entrances. The board concurred with these proposed amendments and directed staff to set up a public hearing for next month.

Tom Neidhamer arrived at 5:17 pm

Proposed Zoning Ordinance Amendments to Parking Requirements

Planning Director McPherson reviewed his staff report included in the agenda packet. In August the commission reviewed the assessment report from Annaka Norris of Cambourne Consultants, and as a result, staff is proposing amendments to Article 24 Parking Loading, and Access Management Requirements. There are two sections of the existing ordinance where the amendments will be incorporated, section 24.20 which would provide the opportunity for properties in the Downtown Core, which is defined as all properties in the Central Business District and the Transitional Commercial District, to pay into the Parking Improvement Fund in lieu of providing required off street parking. The amount to be determined for payment into the improvement fund will be determined by the annual budget, so any monetary changes can be done administratively with city commission approval. There is proposed a new section, 24.85, that would create new minimum parking requirements for properties in the downtown core. Due to the assessment report, there is proposed a 30 to 40% reduction in off street parking in the downtown core due to the availability of public parking. The Planning Commission still has discretion and control over when parking could/would be deferred. As development trends change, may need to look at requirements in the future for parking. Additional refinements will be made and staff anticipates a public hearing in November or December.

Storm Water Control Ordinance

Planning Director McPherson reviewed his staff report included in the agenda packet. East Jordan, Charlevoix and Boyne City have all been working together to come up with a storm water ordinance that fits the communities. There is an ordinance currently that is best suited for the townships. The City has the ability to designate an agent, either the County or someone else. The changes have been provided to the county and Tip of the Mitt Watershed Council and both are ok with the changes suggested. As the City Commission wants to protect our most valuable asset, the lake, we have instituted filtration systems prior to being discharged into the lake. The city placed a holding filtration tank in Sunset Park, and recently took out several trucks of garbage that had been filtered; the new construction projects on Cedar & Terrace streets have french drain systems installed. This commission was very passionate about remaining proactive to keeping the integrity of the waterfront areas. After board discussion, **motion by Newton, seconded by MacNaughton**, to recommend adoption of the proposed Storm Water Ordinance by the City Commission.

****Motion**

2019-9-16-7C

Roll Call:

Aye: Chute, Ellwanger, Kroondyk, MacNaughton, Neidhamer, Newton, Place and Ross

Nay: None

Absent: None

Vacancy: One

Motion Carries

Staff Report

-
- Scott McPherson reminded the commission of the free training provided by MEDC/RRC scheduled for September 30th in Petoskey. The deadline for signing up was September 6th; however, both he and Patrick signed up to “hold” a spot, so if you are interested in attending, please let him know.
 - The pre-con meeting was recently held for the non-motorized trail from the airport to Boyne Falls and work will begin sometime around the 23rd of September in Boyne Falls and will work towards the airport; they will be staging equipment to clear cut

and grade the trail, pavement will be done next year along with work on a board walk to be completed at the south end of the Boyne Mountain airport.

Good of the Order

- What is the status of the short term rentals? McPherson advised that the City Commission has charged staff with identifying the impact of those on the city. An inventory has been done and there are approximately 100 units that have been identified most of them with Water Street Inn and other developments; which leaves about 40 units that are divided between homesteaded and non-homesteaded. We need to look at the economic impact if we do not allow where will they be displaced to, where will their money be spent if not in Boyne? We also need to look at the fact that available housing units are being bought up for vacation rentals, and it is difficult for young families to purchase homes. What is the best balance?
- What is the status of the Property Management Ordinance? McPherson advised that he has an upcoming meeting with the attorney on Thursday, September 19th.
- Last Friday, a meeting was held at city hall regarding Land Banks and Brownfield redevelopment. There was a lot of good discussion and great information was passed along. Additional meetings will be scheduled in the future.

Adjournment
****Motion**

The next regular meeting of the Boyne City Planning Commission is scheduled for Monday, October 21, 2019 at 5:00 p.m.

2019-9-16-10

Ross moved, Chute seconded, PASSED UNANIMOUSLY a motion to adjourn the September 16, 2019 meeting at 6:16 pm

Chair Aaron Place

Recording Secretary Pat Haver



Approved: _____

**MEETING OF
SEPTEMBER 26, 2019**

**RECORD OF THE PROCEEDINGS OF THE MEETING OF THE BOYNE
CITY AIRPORT ADVISORY BOARD HELD SEPTEMBER 26, 2019.**

CALL TO ORDER

Chair Bouters called the meeting to order at **5:30 p.m.** followed by the pledge of allegiance.

**ROLL CALL
ATTENDANCE**

Present: Richard Bouters, Brian Harrington, Doug Brubaker, Leon Vercruysee, Richard Wright,*Rod Cortright *Leon Jarema *Bud Chipman, *Jerry Schmidt, *Al Sturza
**Ex Officio Members*

Staff:

Absent:, Airport Manager/City Manager, Michael Cain

Citizens: Zack White, Avery Pepimski, Zac Eaton, Savannah Leaver, Delaney Jaramillo – *Boyne City High School Civics Class.* Lance Howe – *Leadership Charlevoix County.*

EXCUSED ABSENCES

NONE

MOTION

APPROVAL OF MINUTES

Motion by **Brubaker** Seconded by **Harrington PASSED UNANIMOUSLY** to approve the **August 29, 2019** minutes as amended.

MOTION

CORRESPONDENCE

NONE

**CITIZENS COMMENTS
(NON-AGENDA ITEMS)**

Lance Howe from Leadership Charlevoix County offered a brief summary of Leadership Charlevoix County.

COMMITTEES

NONE

UNFINISHED BUSINESS

A. Safety Seminar – October 10, 2019 @ 6:00pm

The board discussed and verified the preparations for this event which include room set-up and refreshments.

B. Emergency Plan Update: The board reviewed the final revised version of the Boyne City Airport Emergency Plan. A special Thank You goes to Board member Richard Wright for his work developing this revised version. The board will complete an annual review of this plan. Motion by **Wright**, Seconded by **Brubaker PASSED UNANIMOUSLY** to recommend to the City Commission to adopt the Boyne City Airport Emergency

Plan.

NEW BUSINESS

- A. Runway repairs post Drag Race:** After the Labor Day Drag Race, it has been noted that an area of Taxi-way marking has been damaged by race activity. The board will recommend to Michael Cain that the Drag Race committee repair this damage
- B. Other:** Leon Jarema brought forward topics regarding airport maintenance: 1. Filling of holes along the edges of hangar aprons. 2. Finishing the apron in front of hangar B19. 3. Snow plowing in front of City Owned hangars. 4. Airport snow plowing in general. Richard Wright commented on the need for proper and final installation of the Runway Distance Markers. These items are under the charge of the DPW and as such, the Board will invite Tim Foss, the Director of DPW to attend the October board meeting to assist with planning regarding these items.

GOOD OF THE ORDER

- A.** The fuel price at Boyne City Airport is \$4.36/gallon as of September 9, 2019.
- B.** November Business Expo: The board will begin planning for this event.
- C.** Thank you to Rod Cortright for suppling a snack area for airport guests. Items are available on the Honor system @ \$1.00/item.

ANNOUNCEMENTS NEXT MEETING MOTION

- A.** The next regular meeting of the Airport Advisory Board is scheduled for October 24, 2019 at 5:30pm in the airport terminal.

ADJOURNMENT

- A.** The meeting was adjourned **6:32pm** by **Chair Bouters**.

Submitted by:

Richard L. Bouters: __Richard L. Bouters__

Chair – Airport Advisory Board

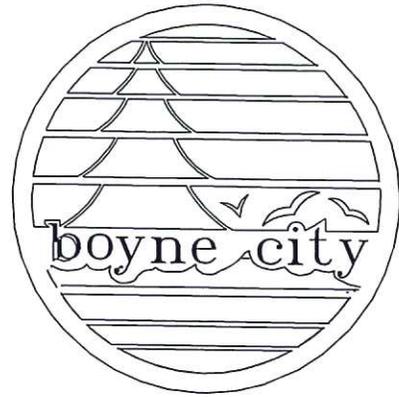
CITY OF BOYNE CITY

To: Michael Cain, City Manager

From: Scott McPherson, Planning Director *SM*

Date: October 8, 2019

Subject: Storm Water Control Ordinance First Reading

**Background**

Prior to 2006 Charlevoix County administered and regulated storm water through the Charlevoix County Storm Water Management Ordinance. The County subsequently repealed the ordinance in reaction to an Attorney General opinion that stated counties could not enact storm water ordinances as that power had not been specifically provided by the State. The opinion further stipulated that cities and townships did have the authority to adopt a storm water ordinance. In the years following the repeal, the County, working through the Michigan Townships Association, with the assistance of Tipp of the Mitt Watershed Council, developed a new storm water control ordinance which the County agreed to administer and enforce for all communities that chose to adopt the ordinance. In 2012 the majority of the townships had adopted the ordinance and had entered into intergovernmental agreements with the County. The proposed ordinance was brought to the Boyne City City Commission in August of 2012 for their consideration, however, the Commission had concerns that the ordinance did not sufficiently consider the unique aspects of the City as compared to rural township in regards to storm water systems and control. Given these concerns the City decided not to adopt the ordinance as proposed. It is my understanding the Cities of Charlevoix and East Jordan also chose not to adopt the ordinance citing similar concerns.

Discussion

While the City of Boyne City did not adopt the proposed storm water control ordinance as proposed, the control and treatment stormwater has been and continues to be a top concern and priority. The City, on its own initiative and expense, has installed and improved storm water control and treatment systems throughout the City. And while not required, developers have voluntarily abided by the storm water control standards of the ordinance. However, given the increasing development pressure, the value and importance of having an enforceable ordinance in place is recognized. In 2013, as part of the SAW grant application, funding was designated for the development of a City storm water ordinance. After the grant was awarded three years later, the City began working on developing a new ordinance. Working with Tipp of the Mitt Watershed Council and partnering with the Cities of East Jordan and Charlevoix, a new ordinance was developed. The draft ordinance has been reviewed and is fully supported by Dr. Grenetta Thomassey, Director of Watershed Policy, Tipp of the Mitt Watershed Council, and has been submitted to Charlevoix County Board of Commissioners, who have tentatively agreed to administer and enforce the ordinance pending review by their legal counsel.

The proposed ordinance is being presented to the City Commission at its October 8, 2019, meeting for a first reading. As required by the Boyne City Charter, ordinance amendments

cannot be adopted until at least one month after the meeting it is introduced. The next available City Commission meeting that meets this requirement would be November 12, 2019. The proposed ordinance has been provided the Cities of East Jordan and Charlevoix and it is being recommended that municipalities that wish to adopt the ordinance do so during the same time frame as this would allow sharing of publication costs.

Recommendation

Schedule proposed Storm Water Management Ordinance for second reading on November 12, 2019.

Options

1. Do not Schedule second reading.
2. Refer proposed ordinance back to staff for further review or changes.
3. Other action as the Commission deems appropriate.

City of _____
Storm Water Management Ordinance

THE CITY OF _____ ORDAINS:

ARTICLE I PURPOSE, OBJECTIVES, & ADMINISTRATION

Section 1.1 Purpose

The purpose of this Ordinance is to supplement Michigan Public Act 451 of 1994, as amended, for the more stringent regulation of storm water discharges originating within the City; to provide a set of regulations for storm water management; and to provide rules and guidelines to facilitate enforcement thereof.

Section 1.2 Objectives

The objective of this Ordinance is to accomplish, among other things, the following:

1. To manage storm water runoff resulting from earth changes occurring within the City of _____, both during and after development.
2. To ensure that future development provides measures to manage the quantity and quality of storm water runoff originating from the property so that surface water and groundwater quality is protected and flooding potential is reduced.
3. To preserve and use the natural drainage system for receiving and conveying storm water runoff and to minimize the need to construct enclosed, below grade storm drain systems.
4. To preserve natural infiltration and the recharge of groundwater and to maintain subsurface flows which replenish lakes, streams and wetlands.
5. To ensure that storm water management systems are incorporated into site planning at an early stage of the planning and design process.
6. To minimize the need for costly maintenance and repairs to roads, embankments, ditches, streams, lakes, wetlands and storm water management facilities which are the result of inadequate storm water control.
7. To reduce long-term expenses and remedial projects which are caused by uncontrolled storm water runoff.
8. To encourage the design and construction of storm water management systems which serve multiple purposes, including but not limited to flood prevention, water quality protection, wildlife habitat preservation, education, recreation and wetlands protection.

9. To minimize the impact of development on downstream properties and to preserve the biological and structural integrity of existing watercourses.
10. To allow for off-site storm water management facilities and measures if such proposals meet the requirements of these regulations.
11. To assure that all storm water management facilities will be properly designed, constructed and maintained in accordance with a uniform set of standards.
12. To provide for enforcement of this Ordinance and penalties for violations.

Section 1.3 Ordinance Administration

The City of _____ shall designate an Enforcing Agent (“Agent”) to administer and enforce the Ordinance. The City may enter into an inter-local agreement with Charlevoix County which will permit the Charlevoix County Soil Erosion and Sedimentation Control Officer to be the Agent for this Ordinance.

Section 1.4 Exclusive Storm Water Regulation Provision

To the extent that this storm water ordinance is in conflict with any previously adopted ordinance within the City, the intent is to have this storm water ordinance supersede any other storm water regulations that may have been previously adopted or included as a portion of other local ordinances or zoning provisions. If any conflicts arise, the City shall either repeal or amend such other ordinances to make this Ordinance the exclusive regulation.

Section 1.5 Repeal

Any non-zoning regulation inconsistent with the storm water regulations contained in this Ordinance is hereby repealed to the extent of such inconsistency.

Section 1.6 Rules Applying to Text in this Ordinance

When not inconsistent with the context, the present tense includes the future; words used in the singular include the plural. The word “shall” is understood to be mandatory, and the word “may” is merely suggestive.

ARTICLE II DEFINITIONS Section 2.1

General

This Article sets forth the definitions of certain terms used within the Ordinance which have a meaning specific to the interpretation of the text of the Ordinance.

Section 2.2 Undefined Words

Any word not defined herein shall first be interpreted as defined within Part 91, Public Act 451 of 1994, as amended, and where not defined there, shall be interpreted within its common and approved usage.

Section 2.3 Definitions

The following terms and phrases shall have the meaning given herein, unless the context otherwise requires:

AGENT: Person designated by the City of _____ for administration and enforcement of the Ordinance.

APPEALS BOARD: The public body which is charged with the responsibility to consider and decide appeals from decisions made by the Agent in administering and enforcing this Ordinance.

APPEALS BOARD CLERK: The individual who is charged with the responsibility to process appeals to the Appeals Board pursuant to Article VIII of this Ordinance.

APPLICANT: The landowner, or his duly authorized agent, for the property upon which a regulated earth change is proposed, and who has submitted an application for a Storm Water Management Permit.

CHANNEL: The portion of a stream which conveys normal flows of water, or a ditch or other conveyance structure excavated for the flow of water.

COMMERCIAL DEVELOPMENT: An activity, action or alteration of property that is proposed for the purpose of a commercial activity, such as retail sales, professional offices, multi-family residential structures of three or more units, or any other purpose which includes access by the public for conducting business. Activity, action or alteration of property by the City is not commercial development.

CONVEYANCE FACILITY (STRUCTURE): A surface or subsurface structure, pipe or channel which transports storm water from one location to another.

COUNTY DRAIN: Drains established and/or constructed pursuant to the Michigan Drain Code (Act 40 of 1956, as amended).

DESIGN STANDARD (OR ENGINEERING DESIGN STANDARD): A specification or set of specifications that prescribes the methodology for developing storm water management facilities based upon a uniform set of standards, calculations, and procedures.

DESIGN STORM: A hypothetical rainfall event that is developed as a statistical relationship between actual rainfall intensity-duration-frequency data for the purpose of modeling the effectiveness of a given drainage system.

DETENTION BASIN (POND): A structure or facility, natural or artificial, which stores storm water on a temporary basis and releases it at a controlled rate to another water course, wetland, conduit or drain. A detention basin may drain completely after a storm event (dry detention basin) or it may be a body of water with a fixed minimum and maximum water elevation between runoff events (wet detention basin).

DISCHARGE: The rate of flow of water through an outlet structure at a given point and time, typically measured in cubic feet per second (cfs) or gallons per minute (gpm).

DISTURBED AREA: An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling.

DRAINAGE: The interception and removal of water (groundwater or surface water) by natural or artificial means.

DOWNSTREAM PROPERTIES: Down gradient lands and waters which receive storm water runoff and other surface water flows from the applicant's property and are often subjected to the cumulative impact of upstream development.

DRAINAGE SYSTEM: All facilities, channels and areas which serve to convey, filter, store and/or receive storm water, either on a temporary or permanent basis.

EARTH CHANGE: A human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. The term "earth change" as used in this Ordinance shall not apply to the practice of plowing and tilling soil for the purpose of crop production.

FLOOD: An overflow of surface water onto lands not normally covered by water. Floods have these essential characteristics: the inundation of land is temporary and results from unusually heavy precipitation and the land is inundated by overflow from a lake, pond, stream and/or wetland, or is flooded by natural runoff.

FLOODPLAIN: The area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal watercourse. For mapping purposes, floodplains are as designated in the National Flood Insurance Program Flood Insurance Rate Maps for the City of _____ effective May 16, 2019 (as amended).

GRADING: Any stripping, clearing, stumping, excavating, filling, stockpiling or any combination thereof, including the land in its excavated or filled condition.

GRUBBING: To clear (ground) of roots and/or stumps.

IMPERVIOUS AREA: Surfaces that do not readily allow rainfall to infiltrate into the soil; examples include but are not limited to: roof area, paved or gravel driveways, parking areas, roads (both asphalt and gravel), or areas of heavy clay soils.

INDUSTRIAL USE: Any manufacturing, processing, fabrication, maintenance assembly, printing or improvement of articles or merchandise, warehousing, wholesaling, storage, or activities related to mineral extraction and processing; and other business enterprises not classified as commercial.

INFILTRATION: The downward movement or seepage of water from the surface into the subsoil and/or groundwater. The infiltration rate is expressed in terms of inches per hour.

MAINTENANCE AGREEMENT: A binding agreement between the landowner and the City, which sets forth the location and design of best management practices as well as terms and requirements for storm water and erosion management facility maintenance, recorded with the Charlevoix County Register of Deeds.

OFF-SITE FACILITY: Storm water management facility which is located partially or completely off the applicant's subject property.

ORDINARY HIGH WATER MARK: The line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law, it means the ordinary high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

OUTFALL: The point where storm water flows out from a conduit, drain or stream.

PEAK DISCHARGE RATE (PEAK FLOW): The maximum calculated rate of storm water flow at a given point in a channel, watercourse, or conduit resulting from a predetermined frequency storm or flood, measured in cubic feet per second (cfs).

PERSON: Any individual, firm, partnership, association, public or private corporation, company, organization or legal entity of any kind, including governmental agencies.

REGISTERED PROFESSIONAL: One following licensed professionals: State of Michigan Licensed Engineer, Land Surveyor, Architect and/or Landscape Architect.

RETENTION BASIN: A wet or dry storm water holding area, either natural or manmade, which does not have any outlet to adjoining watercourses or wetlands other than an emergency spillway.

SITE: Any tract, lot, or parcel of land or combination of tracts, lots or parcels of land proposed for development.

STOP WORK ORDER: A notice for cessation of activity issued by the Agent to any person engaged in an activity in violation of this Ordinance including, but not limited to, grading and development activities.

STORM WATER MANAGEMENT FACILITIES: Any structure, ditch, swale, facility, barrier, berm, vegetative cover, basin or other measure which serves to manage storm water.

Temporary Measures: Installations designed to manage storm water runoff during development or until soils in the contributing drainage area are stabilized.

Permanent Measures: Installations designed to manage storm water runoff after development is completed.

STORM WATER MANAGEMENT PERMIT: Written approval along with supporting documentation and storm water management plan that is executed by the Agent and issued under the provisions of this Ordinance authorizing the applicant to engage in specified earth changes.

STORM WATER MANAGEMENT PLAN: Maps and written information prepared in accordance with specific standards identified within the Ordinance for a proposed land use or earth change. The storm water management plan describes the way in which storm water runoff will be managed during and after completion of the proposed development.

STORM WATER RUNOFF: Excess water that does not infiltrate the soil, but instead flows over the surface of the ground or is collected in channels, watercourses or conduits and transported over a given drainage area.

STREAM: A moving body of water that has definite banks, a bed and visible evidence of a continued flow or continued occurrence of water. See Public Act 451 of 1994, as amended, Part 301, Inland Lakes and Streams Section 324.30101, Subparagraph E, as amended.

SWALE: Low lying grassed area with gradual slopes which transports storm water, either on site or off site.

WATERSHED: A land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.

ARTICLE III REGULATED ACTIVITIES & PERMIT REQUIREMENTS

Section 3.1 Regulated Activities

Except as otherwise provided in this Ordinance, all earth changes described below shall be regulated activities and shall require a Storm Water Management Permit from the Agent, pursuant to Section 3.2 of this Ordinance:

1. Industrial and commercial development regardless of the size or location, with the following exception:

A proposal for redevelopment or alteration of an existing commercial or industrial site with a maximum total increase of ten percent (10%) of the impervious surface in existence on May 8, 2018, or 4,356 square feet, whichever is less, shall not be required to meet the

design standards of this Ordinance. Greater than a ten percent (10%) increase in the impervious surface in existence on May 8, 2018, or more than 4,356 square feet of additional impervious surface shall require storm water management measures in accordance with the design standards of this Ordinance for the entire increase.

2. All subdivision developments as defined by Section 102 of Public Act 288 of 1967, as amended, regardless of size, location or environmental sensitivity.
3. All site condominium developments or condominium developments as defined by Public Act 59 of 1978, as amended, Section 559.101 et seq. of the Michigan Compiled Laws regardless of size, location or environmental sensitivity.
4. A mobile home park, manufactured housing development, or campground.
5. Private roads which either provide access to five (5) or more parcels, are more than five hundred (500) feet in length, and/or have a grade of ten percent (10%) or greater.
6. A private driveway that is at a ten percent (10%) grade or greater, sloping down toward the intersecting road.
7. Public road and facility projects of the City are not classified as regulated activities and are exempt from the permitting requirements of this Ordinance.

Section 3.2 Permit Requirements

For purposes of this Ordinance, a Storm Water Management (SWM) Permit for regulated activities as identified in Section 3.1 is required before any earth changes commence. The SWM Permit requirements are independent of any other regulations governing the proposed earth change, such as soil erosion regulations or zoning requirements, which may require additional permitting through other enforcing agencies. The granting of a SWM Permit shall authorize only such earth changes for which the permit has been issued, and shall not be deemed to approve any development as a whole, or any other land use activities.

Section 3.3 Permit Application Submittal

1. An application for a SWM Permit shall be submitted on the form provided by the Agent, signed by the landowner or his/her duly authorized agent, and shall include a storm water management plan, prepared in accordance with Article IV, along with the appropriate permit and review fees, prior to being considered by the Agent as an administratively complete application. The Agent may request additional storm water management plans or supporting documentation at his/her discretion during the permit review process.
2. The application for a SWM Permit shall be made, reviewed and approved prior to the start of any earth change including construction of access roads, driveways, grubbing or grading. Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of this Ordinance subject to enforcement actions under Article VII regardless of any later actions taken toward compliance. Soil test borings including those utilizing reasonable

backhoe test excavation, vegetative cutting for land surveys, percolation tests and normal maintenance shall not be considered a start of work under these regulations.

Section 3.4 Plan Preparation by a Registered Professional

Following the calculation of pre- and post-development (or increase in development) stormwater runoff, if 100% of this increased storm water will not be retained on-site in a stormwater retention basin, the storm water management plan shall be prepared by a registered professional as defined by this ordinance. The agent may waive this requirement for regulated activities on a single family dwelling site when the agent finds that, considering the size, location, or natural discharge of the stormwater runoff, a storm water management plan is not reasonably required to accomplish the objectives of this ordinance.

Section 3.5 Sequential Applications

1. On development proposals which are so large or complex that a storm water management plan encompassing all phases of the project cannot reasonably be prepared prior to initial ground breaking, an application for a sequential SWM Permit, based on successive major incremental earth change activities may be allowed. Requests for sequential applications shall be approved by the Agent prior to submittal of the initial SWM Permit application.
2. Approval of sequential applications shall take place in two phases. First, the overall conceptual plan for the entire development shall be submitted for review and approval. Second, detailed plans for each phase of the total project shall be submitted for review and approval.
3. All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered for that phase. Each phase of the project must be reviewed and permitted individually prior to construction.

Section 3.6 Permit Application Review

The application review period begins upon receipt of an administratively complete application submittal. The Agent shall act upon an application for an earth change permit involving five (5) acres or less of disturbed area within fifteen (15) calendar days. An application for all other regulated projects shall be acted upon within thirty (30) calendar days.

Section 3.7 Permit Approval or Disapproval

1. If the Agent determines that the proposed storm water management plan complies with the standards in this Ordinance, a permit shall be issued specifying the work approved, along with any supplemental conditions. If the proposed storm water management plan does not comply with these standards, the permit request shall be modified by the applicant or denied. When necessary, the Agent may request additional information from the applicant upon which to base the permit decision.
2. The Agent shall notify the applicant in writing if the application is denied, citing the reasons for the denial.

3. The Agent shall notify the City after a permit decision has been made.
4. Upon written request, the Agent shall furnish any interested party with a statement in writing, detailing the reasons for permit denial or approval.

Section 3.8 Permit Expiration or Revocation

1. SWM Permits shall terminate automatically upon completion of the project or one (1) year from the date of issuance, whichever occurs first. The applicant may request a one-year extension, which shall be reviewed and shall be granted by the Agent if he/she finds good cause for the extension and that the SWM regulations governing the proposed development have not changed since the date the SWM Permit was first approved.
2. A SWM Permit issued by the Agent under this Ordinance may be revoked or suspended, subject to the provisions of Article VII, for any of the following causes:
 - a. A violation of a condition of the permit.
 - b. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or storm water management plan.
 - c. A change in a condition that requires a temporary or permanent change in the activity.

Section 3.9 Permit Revisions

Revisions to an approved SWM Permit, permit condition, or approved storm water management plan must first be approved by the Agent. The applicant shall make a written request for the proposed revision(s) to the Agent, including any supporting documentation that the Agent may require as a basis for making a decision regarding the proposed revision. Proposed revisions do not take effect until approved by the Agent, and construction of unapproved plan revisions may be subject to enforcement action.

Section 3.10 Administrative Fee Schedule

1. All fees applicable under this Ordinance shall be specified in a fee schedule determined from time to time by resolution of the legislative body of the City and maintained in the Agent's office.
2. Permit fees shall be directly related to the actual costs of administering the SWM Permit program, including design review, site inspection, enforcement and permit administration.
3. A printed fee schedule shall be made available by the Agent.
4. If the Agent determines that the basic fees will not cover the actual costs of the application review, or if the Agent determines that review of the application and/or participation in the review process by qualified professional planners, engineers, attorneys, or other professionals is necessary or advisable, then the applicant shall deposit with the Agent such additional fees in an amount determined by the Agent equal to the estimated additional costs. The additional fees shall be held in escrow in the applicant's name and shall be used solely to pay these additional

costs. If the amount held in escrow becomes less than ten percent (10%) of the initial escrow deposit or less than ten percent (10%) of the latest additional escrow deposit and review of the application is not completed, then the Agent may require the applicant to deposit additional fees into escrow in an amount determined by the Agent to be equal to the estimated costs to complete the review. Failure of the applicant to make any escrow deposit required under this Ordinance shall be deemed to make the application incomplete thereby justifying the denial of the application. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application. Any actual costs incurred by the Agent in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the release of a final decision on the application.

Section 3.11 Penalties for Initiating Earth Change Activities without a Permit

Any earth change activity, subject to regulation under this Ordinance, which has commenced without a valid permit, is not proceeding in accordance with an issued SWM Permit, or is in violation of a permit condition shall be considered a violation of this Ordinance and subject to the provisions of Article VII of this Ordinance.

ARTICLE IV STORM WATER MANAGEMENT PLAN REQUIREMENTS

Section 4.1 Storm Water Management Plan Requirements

A storm water management plan shall be prepared for any regulated earth change subject to SWM Permit requirements. The plan shall be designed to effectively manage the runoff from the site to not more than the rate and volume prior to development. Pretreatment of runoff shall be required if deemed necessary by the Agent. Administratively complete plans shall include the following:

1. A map or maps at a scale of not more than two hundred (200) feet to the inch or as otherwise determined by the Agent, including the following:
 - a. A legal description
 - b. Site location sketch which includes the proximity of any proposed earth change to lakes, streams, and wetlands
 - c. Predominant land features
 - d. Contours at not more than 2-foot intervals, or slope description.
2. A written description of the soil types of the exposed land area contemplated for the earth change.
3. A description and the location of the physical limits of each proposed earth change.
4. Location of all lakes, streams, and wetlands partially or completely contained within the boundaries of the site or within fifty (50) feet of the site boundary to the extent that the property owner has the ability of depicting the same.

5. A description and the location of all existing and proposed on-site storm water management facilities and measures.
6. The timing and sequence of each proposed regulated earth change.
7. A description and the location of all proposed temporary storm water facilities and measures.
8. A description and the location of all proposed permanent storm water facilities and measures.
9. Pre and post development storm water calculations.
10. A program for the continued maintenance of all permanent storm water facilities and measures.
11. Other information which the Agent requires to review the impact of the proposed earth change in relationship to the standards and requirements of this Ordinance.

Section 4.2 Site Condominium & Subdivision Requirements

Applicants for site condominium or subdivision plat approval shall submit the same information as in Section 4.1 of this Ordinance and may need to submit additional relevant information including but not limited to the following: off-site watershed boundaries, existing and proposed easements, and proposed drainage system including water movement onto and out of the proposed development.

Section 4.3 General Standards for Approval of Storm Water Management Plans

Approval of a storm water management plan shall be based upon the following general provisions:

1. The Agent shall approve or disapprove storm water management permit applications and plans in accordance with the provisions of this Ordinance and the design standards included and/or referenced in Appendix A.
2. All regulated earth changes subject to review under the requirements of this Ordinance shall be designed, constructed and maintained to provide for the retention/detention of storm water runoff and to protect water quality.
3. Measures required for storm water shall take into consideration natural features, proximity of the site to lakes, streams and wetlands, extent of impervious surfaces, potential for flooding, and the size of the site.
4. Alteration to natural drainage patterns shall not create downstream or off-site flooding.
5. Storm water management plans shall be designed in accordance with the specific design criteria included as "Design Standards", attached and made a part of this Ordinance as Appendix A.
6. All storm water management plans and maintenance agreements shall be recorded with the Charlevoix County Register of Deeds by the Agent, at the expense of the applicant.

7. Storm water management facilities shall be constructed, operated and maintained on the applicant's property, without impact or degradation to downstream conveyance structures or properties. However, the applicant may request a waiver from the requirements for on-site storm water management by written petition to the Agent with the SWM Permit application. Where a request is made for off-site storm water management, the request shall comply with the following general criteria:
 - a. Off-site storm water management areas may be shared between two or more property owners or developments, provided that maintenance agreements have been approved by the Agent and storm water management easements have been obtained and recorded with the Charlevoix County Register of Deeds by the Agent, at the expense of the applicant.
 - b. The storm water management easement shall contain language stating that the easement shall exist as long as said development exists and shall not be modified or terminated without the prior written authorization of the Agent. The Agent may only approve a modification or termination of this easement upon a determination that alternative means are available and will be used to improve the handling and disposition of storm water generated from the development or redevelopment of the site.
 - c. Easements within drainage districts shall require prior approval of the Drain Commissioner.
 - d. Storm water management plan requirements specified in Section 4.3 and the Design Standards included as Appendix A of this Ordinance shall be used as the basis for reviewing off-site storm water management proposals.

ARTICLE V MAINTENANCE, INSPECTION & ACCESS

Section 5.1 Applicability

All temporary storm water management facilities shall be maintained and inspected during the life of the facility to provide adequate protection against adverse impacts from storm water runoff. Permanently installed storm water management facilities shall be routinely inspected and maintained by the property owner or designated qualified party to ensure the continued and proper operation of the facility for the protection of downstream properties.

Section 5.2 Maintenance Requirements

Where maintenance is required, it shall be performed in accordance with the following general provisions, as well as any specific conditions that may be included with the SWM Permit.

1. All storm water management facilities and measures shall be maintained in accordance with permit conditions.

2. The person(s) or organization(s) responsible for maintenance shall be designated in the storm water management plan or the permit application submitted to the Agent. Options may include:
 - a. The owner(s) of the property.
 - b. Property owners association or other designated qualified party as determined by the Agent, provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements.
3. Maintenance agreements may be required by the Agent when the average annual cost of maintenance is reasonably expected to exceed \$500 per year and shall be required for all site condominium and subdivision plat proposals. When required, maintenance agreements shall specify responsibilities for financing maintenance and emergency repairs, including but not limited to the procedures specified in Sections 5.3 and 5.4 and Article VI of this Ordinance.
4. The Agent is not required to accept the applicant's desired responsible party for maintenance purposes in a given situation. Natural features, proximity of site to lakes, streams and regulated wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision, as well as the overall complexity of the storm water management facilities. Where deemed necessary by the Agent, third party maintenance may be required for the adequate protection of sensitive sites, or complex storm water management facilities.

Section 5.3 Inspections

1. The Agent, or his/her authorized agent, shall have the right to conduct on-site inspections of the storm water management facilities to verify compliance with the requirements of this Ordinance, including that maintenance is being performed as required by this Ordinance. Any such inspections may take place before, during, and after any earth change activity has occurred for which a permit has been issued. The Agent or his/her authorized agent shall exercise this right to inspection by written consent of the person having the right to possession of the property, or by administrative search warrant issued by a court of competent jurisdiction. Submission of an application for a permit under this Ordinance shall be deemed as providing written consent for the Agent to conduct on-site inspections of the storm water management facilities.
2. If upon inspection, existing site conditions are found not to be as stated in the permit or approved storm water management plan, the permit may be revoked. No earth disrupting work shall be undertaken or continued, except preventative storm water measures as authorized by the Agent, until revised plans have been submitted and a valid permit issued.
3. Requests for revisions must be submitted to and approved by the Agent in writing before being effective unless approved by the Agent on site. If a change is approved on site, the following shall occur:
 - a. The Agent shall provide written verification of a change and/or revision.
 - b. The permit holder shall provide updated drawings, calculations, etc. to reflect the changes and/or revisions.

Section 5.4 Storm Water Management Easements

1. If any portion of the storm water management facilities will be located on property other than the property on which the storm water will originate, then the owner of the property on which the storm water will originate shall obtain a storm water management easement from the owner of the property on which all or a portion of the storm water management facilities will be located. The storm water management easement shall define the scope of the easement to include at a minimum the legal right of the owner of the property on which the storm water will originate to access the property on which the storm water management facilities will be located for the purpose of installing, inspecting, and maintaining the storm water management facilities; shall run in perpetuity with the land benefitted by the easement, or until the storm water management facilities are removed, whichever is sooner; and shall be recorded in the office of the Charlevoix County Register of Deeds.
2. A recorded copy of the storm water management easement shall be filed with the Agent prior to the issuance of a SWM Permit.
3. The recorded storm water management easement shall not be revoked, terminated, reconveyed, or amended without the prior written authorization of the Agent. Any such extinguished or revised storm water management easement shall be recorded in the office of the Charlevoix County Register of Deeds, and a recorded copy shall be filed with the Agent.

ARTICLE VI COMPLIANCE ASSURANCE

Section 6.1 Performance Guarantees

1. Applicants proposing subdivision plats, site condominiums, private road construction projects, or other developments identified by the Agent with a high potential for storm water management problems may be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount sufficient to assure the installation and completion of the storm water management plan.
2. Letters of credit shall extend for a minimum of one (1) year with the option of renewal. Money held in escrow, cash deposits, and/or certified checks will be returned to the applicant when the site is completely stabilized to meet requirements set forth by the Agent, and as-built plans of the site, sealed by a State of Michigan Licensed Professional Engineer, are submitted to the Agent.

Section 6.2 Construction Certification by a Registered Professional

1. For any sites that require a professionally prepared site plan in accordance with Section 3.4, a certification letter shall be submitted after any storm water management facilities have been installed to affirm that construction has been completed in accordance with the approved storm water management plan. Unless this Ordinance requires certification by a State of Michigan Licensed Engineer as provided later in this section, the certification letter can be prepared by a registered professional as defined by this ordinance.

2. If there are changes during the course of construction, the Agent may require final “as-built” drawings for final approval of the site work.
3. “Changes during construction”, as used in this Section, includes, but is not limited to: unanticipated soil conditions, elevation, acts of God, or other changes in circumstances not anticipated during the initial application process.
4. Sites Where Certification by a State of Michigan Licensed Engineer is Mandatory
 - a. Certain activities listed under the Michigan Natural Resources and Environmental Protection Act (Public Act 451 of 1994, as amended).
 - i. Part 23, Pretreatment
 - ii. Part 31, Floodplain
 - iii. Part 41, Sewage Systems
 - iv. Part 111, Solid Waste
 - v. Part 115, Hazardous Waste
 - vi. Part 307, Inland Lake Levels
 - vii. Part 309, Inland Lake Improvements
 - viii. Part 315, Dams
 - b. Certain activities listed under the U.S. Environmental Protection Agency, Title 40 of the Code of Federal Regulations.
 - i. Part 112, Spill Prevention, Control and Counter Measures
 - ii. Part 122, Storm Water Pollution Prevention Plan (SWPS)

Section 6.3 Letter of Compliance

Upon receipt and approval of the certification letter, the Agent shall issue a letter of compliance to the property owner.

ARTICLE VII STOP WORK ORDERS & ENFORCEMENT ACTION

Section 7.1 Stop Work Orders

1. If necessary to assure compliance with the permit requirements, standards, and other provisions of this Ordinance or to protect public health, safety and/or welfare, the Agent may issue a stop work order for the purpose of preventing uncontrolled storm water, or other conditions posing imminent and substantial danger to public health, safety, welfare or natural resources.
2. The stop work order, when issued, shall require all specified storm water activities to be stopped. A copy of the stop work order shall immediately be submitted to other state and local agencies with regulatory jurisdiction. Said order shall describe the specific alleged violation and the steps deemed necessary to bring the project back into compliance.

3. If the Agent determines that storm water violations have or will reasonably occur from a parcel of land in violation of this Ordinance, it may seek to enforce the Ordinance by notifying the person who owns the land by mail, with return receipt requested, of its determination. The notice shall contain a description of specific storm water measures which, if implemented by the property owner, would bring the property owner into compliance.

Section 7.2 Enforcement

1. Any person who violates any provision of this Ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Sections 600.101-600.9939 of Michigan Compiled Laws and shall be subject to a fine of not more than Five Hundred and 00/100 Dollars (\$500.00). In addition, any person found responsible for a municipal civil infraction may be subject to an enforcement order issued by the District Court Judge requiring remedial action to bring the property into compliance with this Ordinance. Each day this Ordinance is violated shall be considered as a separate violation.
2. The Agent and any other person designated by the legislative body of the City are hereby designated as the authorized officials to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.
3. A violation of this Ordinance is hereby declared to be a public nuisance or a nuisance per se and is declared to be offensive to the public health, safety and welfare.
4. In addition to enforcing this Ordinance through the use of a municipal civil infraction proceeding, the Agent may initiate proceedings in the Circuit Court on behalf of the City, to abate or eliminate the nuisance per se or any other violation of this Ordinance.

Section 7.3 Emergency Action

1. Where necessary to protect public safety or water resources, including lakes, streams, regulated wetlands, and other receiving bodies of water, the Agent, through a Circuit Court abatement proceeding, may seek a temporary restraining order or preliminary injunction from the court authorizing entry onto private property for the purpose of initiating emergency action to abate imminent and substantial danger and risk.
2. Except as otherwise provided through maintenance agreements, the property owner shall reimburse the City and/or Charlevoix County for all expenses incurred as a result of the emergency action, including but not limited to reasonable attorneys fees, administrative costs, and the costs of any remedial action taken to abate the emergency condition.

ARTICLE VIII APPEALS

Section 8.1 Creation of Appeals Board

An Appeals Board is hereby created which shall consist of five (5) members. The membership and organizational structure of the Appeals Board shall be determined by the City. When discharging its duties under this Ordinance, the Appeals Board shall comply with all requirements of the Open Meetings Act, being Act 267 of the Public Acts of 1976, as amended. The Appeals Board Clerk shall be responsible for providing all required notices for Appeals Board hearings and for taking the minutes of the Appeals Board hearings.

Section 8.2 Right of Appeal

Any person aggrieved by the action or inaction of the Agent related to this Ordinance may appeal to the Appeals Board. Such appeal shall be made in writing and shall be filed with the Appeals Board Clerk within thirty (30) calendar days of the decision that is being appealed. Any appeal that is not filed in a timely manner shall be dismissed by the Appeals Board. The written appeal shall state the order, requirement, decision, or determination that is being appealed, the sections of this Ordinance that relate to the appeal, and those facts relevant to the appeal, which support the basis for the appellant's claim.

Section 8.3 Appeals Process

Upon receipt of an appeal, the Appeals Board Clerk shall direct the Agent to transmit to the Appeals Board a summary report of all previous action taken on the subject of the appeal, a copy of any permits issued, and the appellant's written statement. The Appeals Board will then adhere to the following general process:

1. Within fifteen (15) calendar days of receiving a completed application, the Appeals Board Clerk shall schedule a hearing date before the Appeals Board. The Appeals Board Clerk shall send a written notice specifying the time, date, and place of the Appeals Board hearing to the appellant and to all land owners within three hundred (300) feet of the subject parcel and shall publish a copy of the hearing notice in a newspaper of general circulation within the City where the subject property is located. The notice shall be mailed and published no less than fifteen (15) days before the scheduled hearing. The Appeals Board shall hold the hearing within sixty (60) calendar days from receipt of a completed application.
2. The appellant shall deposit with the Appeals Board Clerk when the appeal is filed the required fee, as specified in the fee schedule adopted under Section 3.10.1 of this Ordinance. The fee shall be used to cover the cost of handling said appeal including compensation for Appeals Board members and associated administrative costs.
3. If the Appeals Board Clerk determines that the basic fee will not cover the actual costs of the appeal, then the appellant shall deposit with the Appeals Board Clerk such additional fees in an amount determined to be equal to the estimated additional costs, including costs which may be incurred by the Agent. The additional fees shall be held in escrow in the appellant's name and shall be used solely to pay these additional costs. If the amount held in escrow becomes less than ten percent (10%) of the initial escrow deposit or less than ten percent (10%) of the latest additional

escrow deposit and the appeal is not completed, the Appeals Board Clerk may require the appellant to deposit additional fees into escrow in an amount determined to be equal to the estimated costs to complete the appeal. Failure of the appellant to make any required deposits shall be deemed to make the appeal incomplete thereby justifying denial of the appeal. Any unexpended funds held in escrow shall be returned to the appellant following final action on the appeal. Any actual costs incurred in excess of the amount held in escrow shall be billed to the appellant and shall be paid by the applicant prior to the release of a final decision on the appeal.

4. The Appeals Board may affirm or reverse, wholly or in part, a decision of the Agent. In deciding an appeal, the Appeals Board shall determine:
 - a. Whether the Agent properly interpreted and applied this Ordinance in making the decision.
 - b. Whether the specific situation has circumstances that warrant a variance from the standards of this Ordinance. Where the Appeals Board has determined that a variance from the standards of this Ordinance may be warranted, the Board may grant the appellant a variance from any design standard, setback, or other provision contained within this Ordinance, provided that such variance complies with the following general standards:
 - i. The variance will not adversely impact adjacent property owners or downstream properties in any material way.
 - ii. The variance is necessary to grant the appellant substantial relief from a hardship that would otherwise be imposed by strict enforcement of this Ordinance.
 - iii. The variance granted is the minimum deviation from the requirements of this Ordinance necessary to do substantial justice to the appellant. The Appeals Board may include such conditions or limitations on any variance issued to ensure that granting the relief requested will not substantially prevent, nor result in less, effective management of storm water runoff.
 - iv. Granting of the variance would not knowingly be in conflict with other regulatory requirements.
 - v. The need for the variance is due to circumstances that are unique to the property in question and not due to any act or omission of the property owner, a prior property owner, or a past or present occupant of the property.
5. The decisions of the Appeals Board shall in all instances be final administrative decisions, shall be in writing, and shall include specific findings of fact by the Board, and further, shall be subject to such judicial review as by law may be provided.

ARTICLE IX SEVERABILITY

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

ARTICLE X EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after its enactment.

ARTICLE XI REVISIONS

The Agent shall review this Ordinance at least biannually, and make recommendations for amendments if needed. The recommendations of the Agent shall be transmitted to the legislative body of the City of _____.

APPENDIX A

City of _____ Storm Water Ordinance Design Standards

Temporary Storm Water Management Standards

1. Temporary storm water management facilities shall be installed by the applicant and inspected by the Agent before grading, filling or grubbing is initiated.
2. Where permanent storm water management facilities, such as detention or retention basins are proposed for use during construction as a temporary storm water management measure, the construction sequence and grading plan shall be designed for the proper and effective implementation of these facilities.
3. Temporary storm water management measures shall be maintained throughout the duration of the earth change, including the later stages of development. Maintenance activities may include, but are not limited to removal of accumulated sediment, structural repairs, and reseeding or replacement of temporary vegetative covers.
4. Temporary storm water management facilities shall be designed in accordance with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) Best Management Practices (BMP) Guide Book for Michigan Watersheds.
5. At a minimum, during construction all regulated earth changes shall be required to provide temporary storm water management that either contains the volume of runoff generated from a 10-year, 24-hour design storm on-site for all disturbed area, or to provide silt fencing or other permeable barriers that will manage the flow of storm water discharging off-site, diffusing it and releasing it at reduced velocities, where such discharge will not adversely impact downstream properties.

Permanent Storm Water Management Standards – General

1. Storm Water Management Plan Preparation

- a. For regulated activities on sites that exceed 1 acre, the Agent may require the Storm Water Management Plan is prepared by a registered professional as defined by this ordinance.
 - b. For regulated activities on sites that exceed 1 acre, the Agent may request that the submitted site plan be reviewed by one or more registered professionals contracted by the Agent. The costs incurred for such review(s) shall be the responsibility of the applicant. The applicant shall deposit with the Agent such fees in an amount determined by the Agent equal to the estimated costs. The fees shall be held in escrow in the applicant's name and shall be used solely to pay these costs. If the amount held in escrow becomes less than ten percent (10%) of the initial escrow deposit or less than ten percent (10%) of the latest additional escrow deposit and review of the application is not completed, then the Agent may require the applicant to deposit additional fees into escrow in an amount determined by the Agent to be equal to the estimated costs to complete the review. Failure of the applicant to make any escrow deposit required under this Ordinance shall be deemed to make the application incomplete, thereby justifying denial of the application. Any unexpended funds held in escrow shall be returned to the applicant following final action on the application. Any actual costs incurred in excess of the amount held in escrow shall be billed to the applicant and shall be paid by the applicant prior to the release of a final decision on the application.
 - c. If the applicant disputes the Agent's need for outside professional assistance in the review of the submitted plans, or the professional(s) selected, the applicant has the right to appeal the Agent's decision to the Appeals Board, who shall be responsible for making the final decision.
2. On-site storm water management facilities which minimize adverse impact to downstream properties shall be required for all sites unless a proposal for off-site storm water management has been approved. Storm water management facilities may include, but are not limited to: retention basins/ponds, detention basins/ponds, wet basins, storm water treatment units, controlled outfall structures, and rain gardens or other bio-filtration systems.
 3. The Michigan Department of Environmental Quality "Urban Stormwater Best Management Practices Manual" will be used as a reference as well as the following manuals: "Controlling Urban Runoff" by the Metropolitan Washington Council of Governments; "Designing Stormwater Quality Management Practices" by the University of Wisconsin, Madison; and the "Design of Stormwater Filtering Systems" by the Center for Watershed Protection.
 4. Retention and detention basins shall have an emergency overflow system. The overflow system shall be designed to accommodate flow from a 100-year storm event, or as otherwise required by the appropriate State of Michigan agency.
 5. If the storm water facilities for a 50-year storm cannot discharge to a stream, lake or wetland without causing scouring, flooding or pollution on site or downstream, then the basin shall be designed to hold or infiltrate storm water from a 100-year, 24-hour frequency storm event.
 6. Sites that are located in areas serviced with a municipal storm system, and that have the prior approval of the municipal system owner, may discharge storm water to that system after it has been treated with an approved separator system that removes sixty percent (60%) of sediments. The

applicant shall be responsible for all costs incurred to the municipal system to accommodate any storm water discharged to the system from the site.

7. The rainfall amounts for Charlevoix County shall be the numbers given by the Natural Resources Conservation Service for a 24-hour duration and are as follows: 1-year storm equals 1.8 inches; 2-year storm equals 2.2 inches; 5-year storm equals 2.7 inches; 10-year storm equals 3.0 inches; 25-year storm equals 3.5 inches; 50-year storm equals 3.9 inches; 100-year storm equals 4.2 inches.
8. The maximum grade for the side slopes of any storm water retention or detention basin shall be no greater than 3:1 (horizontal to vertical) for vegetated basins. Where, due to site limitations, this maximum side slope grade cannot be met, the Agent may grant an increase in the slope, provided additional stabilization (beyond seed and mulch) is proposed.
9. Storm water basins with permanent pools of water of three (3) foot depth or greater with side slopes steeper than one (1) on six (6) shall have one or more of the following safety features:
 - a. Safety ledges at the basin perimeter which are at least ten (10) feet wide
 - b. Aquatic vegetation surrounding the basin which discourages wading
 - c. Fencing to prevent unauthorized access to the basin.
10. Storm water detention basins shall not be constructed in regulated wetlands unless approved by the appropriate State of Michigan agency and/or the Army Corps of Engineers.
11. Storm water detention basins which impound five (5) acres or more and have a head of six (6) feet or more shall meet dam construction permit requirements in Part 315 of Act 451 of 1994, as amended, administered by the Michigan Department of Environmental Quality.
12. Whenever possible, a created wetland or other bio-filtration area shall be incorporated into storm water management facilities to assist removal of soluble pollutants that cannot be removed by conventional settling. Sediment carried off by runoff shall be required to settle out prior to discharge into the created wetland or other bio-filtration area.
13. Storm water management basins designed for retention, detention or infiltration shall be isolated from septic systems and water wells by fifty (50) feet or more. Variations in the required setback may be granted by the Health Department of Northwest Michigan prior to the issuance of a Charlevoix County Storm Water Management Permit.
14. New fueling stations will be required to install an approved separator system for sites that discharge storm water off-site. Existing fueling stations that are modifying more than twenty five percent (25%) of their existing impervious surfaces will be required to install an approved separator system if they discharge storm water off-site.

Retention Basin Design

1. Small projects in areas that have less than one-half (0.5) acre of impervious surface shall be allowed to have runoff retention stored at two inches (2") of runoff from all impervious surface areas in lieu of detailed hydrologic calculations.
2. At a minimum, retention basins created in soils with permeability greater than 1.3 inch per hour shall have the storage capacity to hold the increase in runoff volume generated by the earth change.
 - a. The required volume shall be calculated by comparing the undeveloped conditions for a 2-year, 24-hour frequency storm event to the developed condition for a 25-year, 24-hour frequency storm event. Soil permeability rates are listed in the following table:

Soil Texture & Structure	Permeability (Inches/Hour)
Coarse Sand and Medium Sand	6 or more
Fine Sand and Loamy Sand	3 – 6
Sandy Loam	2 – 3
Loam, Sandy Clay Loam	1.3 – 2
Clay Loam, Silt Loam, Clays, Silts, Muck, Peat, Marl	Less than 1.3

- b. The retention basin shall be designed to drain within seventy two (72) hours.
3. At a minimum, retention basins, which are created in soils with permeability less than 1.3 inch per hour, shall be designed to store runoff from back-to-back 50-year, 24-hour rainfall events.

Detention Basin Design Standards

1. When using the Natural Resource Conservation Service Method, the volume of a detention pond is to be calculated based upon a 50-year, 24-hour storm with the developed site conditions and with an allowable outflow of a 10-year, 24-hour storm based upon the pre-existing site conditions or 10% of the flow rate calculated by the 50-year developed site conditions analysis. [The TR-55 program does not accept lower values than ten percent (10%) of the developed rate.]
2. The allowable peak discharge rate from a permanent storm water management measure may be a staged rate. The maximum allowable peak discharge rate shall not exceed the peak discharge rate from the project site prior to the proposed development for all of the following 24-hour storm

events: 2-year, 5-year, 10-year, 25-year, and 50-year. In no event shall the discharge exceed the ability of the downstream condition to convey the flow without damage to abutting properties.

3. All sites with greater than one (1) acre of impervious surface will require the detention outflow to be directed to approved storm systems or have the approval of adjacent property owners, with documented easements, or one can release at a 2-year before construction rate if it can be determined that there is not a flooding hazard on the adjacent property. Low porosity in the soils in the area of discharge and depressions in the land would be examples of reasons to deny detention out-flowing at a 2-year rate. Sites that have three (3) acres or more of parking area must in addition have an approved separator system to remove impurities before discharging to the detention/retention pond or install an approved treatment forebay.

Storm Water Separator Design Standards

1. Approved separators are to remove a minimum of sixty percent (60%) of sediments.
2. Treatment forebay criteria – The treatment forebay is designed to store the “first flush” of pollutants typically found in urban storm water runoff, and to capture initial flush pollutant loads.
 - a. The treatment forebay shall be a wet basin or approved structure with an impermeable bottom and sides to the design high water level.
 - b. Sizing – The treatment forebay shall be sized to store the water quality volume (V^{wq}) defined as one-half (0.5) inch of runoff from the directly connected impervious area. This volume can be included in the overall flood control volume.
 - c. The minimum required water quality volume is given by the equation:

$$V^{wq} = 1815 A 1$$

Where: V^{wq} = Water quality volume (cft)

1815 = 0.5 inch of runoff x 3,630 to convert ac-in to cft

A = Contributing drainage area (ac)

1 = Percent impervious expressed as a ration

- d. Capacity for the water quality volume shall be provided above the normal water level.
- e. The overflow structure from the treatment forebay shall be sized for the peak inflow from the design rainfall event.
- f. The top-of-berm elevation between the treatment forebay and the infiltration basin shall be a minimum of one (1) foot below the outer berm elevation.
- g. The treatment forebay shall have a minimum 1-foot-deep sump below the inlet pipe for sediment accumulation.

- h. The outlet structure from the treatment forebay shall be designed to draw water from the central portion of the water column with the forebay to trap floatables and contain sediments. The top of the inlet structure shall be located a minimum of one (1) foot below the normal water level, and the invert shall be a minimum of one and one-half (1.5) feet above the bottom of the treatment forebay.
- i. Material – Treatment forebays shall be lined with impermeable materials extending up to the design high water elevation. A minimum 18-inch-thick clay layer, or an impermeable liner protected with a minimum of twelve (12) inches of soil cover are acceptable alternatives. Maximum allowable permeability shall be 0.0001417 inch/hour as determined by a geotechnical engineer for clay placement, or manufacturer’s certificate for line products.

Underground Storm Water Management Facilities

- 1. If the use of storm water retention or detention basins, either on-site or off-site is not feasible and the permeability of the soils is greater than 1.3 inch per hour, the installation of underground drainage systems (catch basins / manholes with open bottoms with stone and/or run(s) of perforated piping) may be allowed if they provide for detention or retention volumes as stated in these Charlevoix County Storm Water Ordinance guidelines. The perforated piping and dry basin structure(s) cannot be considered to provide for any outflow when calculating volumes for the detention system design. All underground drainage systems must provide the following:
 - a. Catch basins or separator systems, sediment basins, silt traps for storm water flowing to the underground drainage system
 - b. An approved overflow system
 - c. Adequate provisions for maintenance
- 2. The required detention volume may be reduced by the Agent by an amount not to exceed fifty percent (50%) if rain gardens are implemented and demonstrate the ability to accommodate an equivalent amount of storm water.

CITY OF BOYNE CITY

To: Michael Cain, City Manager

From: Tim Faas, Director of Public Works **TF**

Date: October 3, 2019

Subject: **Michigan Avenue & N Lake Street Resurfacing Project
Charlevoix Road to Lakeview Drive
MDOT Contract No. 19-5469 Recommendation**

BACKGROUND:

Over the past couple of years, the City has been planning the rehabilitation and/or reconstruction of the existing pavement along N Lake Street from the City boat launch to W Michigan Avenue. The current cost estimate for rehabilitation is \$325,900.

MDOT has programmed \$209,907 in funds to cover a portion of the cost of the road project split between Federal Surface Transportation Funds and State of Michigan Transportation Economic Development – Category D Funds as depicted on page 8 of the contract document. The \$115,993 difference is to be funded by the City of Boyne City from our Major Street Fund in the 2020/2021 Fiscal Year Budget. An amount of \$250,000 was included in our Capital Improvement Plan for this project.

The project plans have been submitted to MDOT for approval and the project is scheduled to be bid in December 2019. This road project would be constructed sometime starting in the spring of 2020.

The next step in the process of completing this project is execution of the contract with MDOT and providing the required certified resolutions to MDOT from the City Commission.

RECOMMENDATION:

It is my recommendation that the City Commission approve the attached certified resolution approving the contract with MDOT for the Michigan Avenue and North Lake Street Project (Contract No. 19-5469) and further authorizing the City Manager and City Clerk/Treasurer to execute the documents.

OPTIONS:

1. That this matter be postponed for further information or consideration
2. That this matter be approved subject to some revision
3. Other options as determined by the City Commission

Encl: MDOT Letter dated Sept 26, 2019
MDOT Contract No. 19-5469
MDOT Certified Resolution
Sketch of Project Limits

CERTIFIED RESOLUTION
MDOT CONTRACT NUMBER 19-5469

Commissioner _____ moved the adoption of the following resolution:

WHEREAS, the City of Boyne City has received and reviewed Contract Number 19-5469 from the State of Michigan, Department of Transportation for the rehabilitation of Michigan Avenue and North Lake Street, Control Section STL 15000, MDOT Job Number 208736CON; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the project scope and desire to set forth the understanding in the form of a written contract.

NOW, THEREFORE, BE IT RESOLVED THAT: the City of Boyne City – City Commission:

1. Does hereby approve MDOT Contract Number 19-5469; and
2. Designates Michael Cain (City Manager) and Cindy Grice (City Clerk/Treasurer) as the authorized signatories for this contract.

The motion was supported by Commissioner _____, and carried by the following votes:

Yeas ____

Nays ____

Absent ____

Adopted by the City of Boyne City – City Commissioners on October 8, 2019.

City Clerk/Treasurer



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

PAUL C. AJEGBA
DIRECTOR

September 26, 2019

Ms. Cindy Grice, City Clerk/Treasurer
City of Boyne City
319 North Lake Street
Boyne City, Michigan 49712



Dear Ms. Grice:

RE: Contract Number: 19-5469
Control Section: STL 15000
Job Number: 208736CON
Location: Michigan Avenue and North Lake Street - Charlevoix Road to Lakeview Drive

Enclosed is one (1) original and one (1) copy of the above referenced contract between your organization and the Michigan Department of Transportation (MDOT). Please take time to read and understand this contract.

1. Do not date the contracts. MDOT will date the contracts when they are executed.
2. If this contract meets with your approval, secure the authorized signatures on the enclosed contracts.
3. Attach two (2) original certified resolutions. The resolution should include:
 - The name of officials authorized to sign the contract.
 - The Contract Number.

If you need an example of a resolution, please contact Kathy Fulton at fultonk@michigan.gov or (517) 335-4404.

4. Return signed contracts and resolutions for MDOT execution to:

Kathy J. Fulton, Contract Technician
MDOT – Development Services Division, 2nd Floor
425 West Ottawa Street, P.O. Box 30050
Lansing, MI 48909

To ensure that the work and payment for this project is not delayed, return the contracts within 35 days from the date of this letter. A copy of the executed contract will be returned to your organization.

If you have questions on the content of this contract, or revisions are required, please contact Monica Uribe, Local Government Contract Engineer at uribem1@michigan.gov or (517) 335-2266.

Enclosure

TED (D)
FED

CAB
Control Section STL 15000
Job Number 208736CON
Project 1901(064)
CFDA No. 20.205 (Highway Research
Planning & Construction)
Contract No. 19-5469

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of DO NOT DATE, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF BOYNE CITY, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Boyne City, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated September 18, 2019, attached hereto and made a part hereof:

Hot mix asphalt cold milling and resurfacing work along Michigan Avenue from Michigan Street easterly to North Lake Street, and along North Lake Street from North Lake Street easterly to approximately 250 feet south of Lakeview Drive; including concrete curb and gutter replacement, pavement marking, and concrete sidewalk ramp upgrade work; and all together with necessary related work.

WITNESSETH:

WHEREAS, the PROJECT has been approved for financing in part with funds appropriated to the Transportation Economic Development Fund, hereinafter referred to as "TED FUNDS", pursuant to PA 234 of the Public Acts of 1987, MCL 247.660; and

WHEREAS, it was determined that the PROJECT as described by this contract qualifies for funding pursuant to PA 233, Section 2(2); Public Act of 1987 and categorized as:

D FUNDED PROJECT

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal Program(s) or funding:

SURFACE TRANSPORTATION PROGRAM

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be done in accordance with PART II, Section II of this contract.

Any items of PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

- A. Design or cause to be designed the plans for the PROJECT.
- B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

- C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met by contributions by the Federal Government and/or TED FUNDS. Federal Surface Transportation Funds shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 39 percent. State TED FUNDS Category D shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 28 percent up to an amount not to exceed \$82,807 . The remaining balance of the PROJECT COST, after deduction of Federal Funds and/or TED FUNDS, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share, if any, of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds and/or TED FUNDS earned as the PROJECT progresses.

Any items of PROJECT COST not reimbursed by Federal Funds and/or TED FUNDS will be the sole responsibility of the REQUESTING PARTY.

6. A working capital deposit by the REQUESTING PARTY will not be required for this PROJECT.

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will promptly cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, if applicable, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that, if applicable, remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the

DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the state and/or the FHWA.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT does not relieve the REQUESTING PARTY and the local agencies, as applicable, of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability

for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The REQUESTING PARTY and other local agencies, as applicable parties, understand and agree that the highway(s) or street(s) being improved under the terms of this agreement and funded with Transportation Economic Development Funds, shall not be subject to any restriction by local authorities in using certain commercial vehicles on such highway(s) or street(s). Such restrictions are in conflict with the basic concept of the Transportation Economic Development Program and Funding. The REQUESTING PARTY, by signing this agreement, agrees to obtain concurrence from other local governmental agencies within whose jurisdiction or control the highway(s) or street(s) are being improved.

19. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

20. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF BOYNE CITY

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By MDOT ONLY
Department Director MDOT

By _____
Title:

September 18, 2019

EXHIBIT I

CONTROL SECTION	STL 15000
JOB NUMBER	208736CON
PROJECT	19019064)

ESTIMATED COST

CONTRACTED WORK

Estimated Cost	\$325,900
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COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$325,900
Less Federal Surface Transportation Funds	\$127,100
Less State TED FUNDS	<u>\$ 82,807</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$115,993

*State TED FUNDS Category D shall be applied to the eligible items of the PROJECT COST at a participation ratio equal to 28 percent up to an amount not to exceed \$82,807.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
 - 1. Engineering
 - a. FAPG (6012.1): Preliminary Engineering
 - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
 - c. FAPG (23 CFR 635A): Contract Procedures
 - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
 - 2. Construction
 - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
 - b. FAPG (23 CFR 140B): Construction Engineering Costs
 - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
 - d. FAPG (23 CFR 635A): Contract Procedures
 - e. FAPG (23 CFR 635B): Force Account Construction
 - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
 - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
 - 3. Modification Or Construction Of Railroad Facilities
 - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
 - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

- F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

- a. Agencies expending a total of \$500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

- The Reporting Package
- The Data Collection Form
- The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than \$500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than \$1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

**APPENDIX B
TITLE VI ASSURANCE**

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
 - a. Withholding payments to the contractor until the contractor complies; and/or
 - b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

**TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE
AGREEMENTS WITH LOCAL AGENCIES**

**Assurance that Recipients and Contractors Must Make
(Excerpts from US DOT Regulation 49 CFR 26.13)**

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:**

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:**

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.



City of Boyne City

MEMO

Date: September 30, 2019

To: Mayor Neidhamer and the Boyne City City Commission

From: Michael Cain, City Manager *MC*

Subject: Cyber Insurance Quotation

The Commission may recall that last year we renewed our liability insurance for a period of up to 3 years. A copy of the memo from last year is attached. Due to that renewal our overall insurance cost for the coming year will be very close to that of last year. The rates are unchanged but state vehicle insurance fees are increasing slightly (about \$700). Other changes, increases and decreases in vehicle coverages and properties covered basically balance each other out at this time.

Since then the need for Cyber Insurance has become more apparent given the increase in ransomware and similar criminal activities targeting computer systems of various types of organizations, including governments. Attached for the Commission's consideration is a quotation for such coverage requested from our agent, Paul Olson, from a firm he has worked with for other similar communities. The Michigan Township Participating Plan which provides most of our other coverages is preparing, but does not yet have, a product of its own. Once it does we can compare the coverages and costs to what is before us today and change if desired.

The proposed additional coverage is \$1,621 for a year (as noted on page 13) including cyber deception coverage, which is described in more detail on attached page 5.

Although the speakers at the MML session that I moderated during the convention on computer ransomware recommended against paying ransoms so not to encourage the practice further I believe it is prudent for us to obtain this coverage and give ourselves options if the need ever arises.

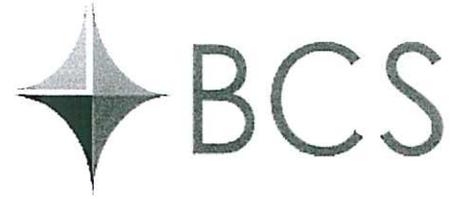
This expense has not been included in the current fiscal year budget but can be provided when we amend the budget, if needed, and in next year's budget. This items will overlap both of those budgets.

RECOMMENDATION: That the City Commission authorize the City Manager and the City Clerk/Treasurer to take the steps necessary to obtain Cyber Insurance for \$1,621 as noted under the quotation from the BCS insurance company for 2019-2020.

- Options:
- A. Postpone for further review and/or information.
 - B. Postpone to seek other quotations.
 - C. Do not obtain cyber insurance at this time.
 - D. Other options as determined by the City Commission.

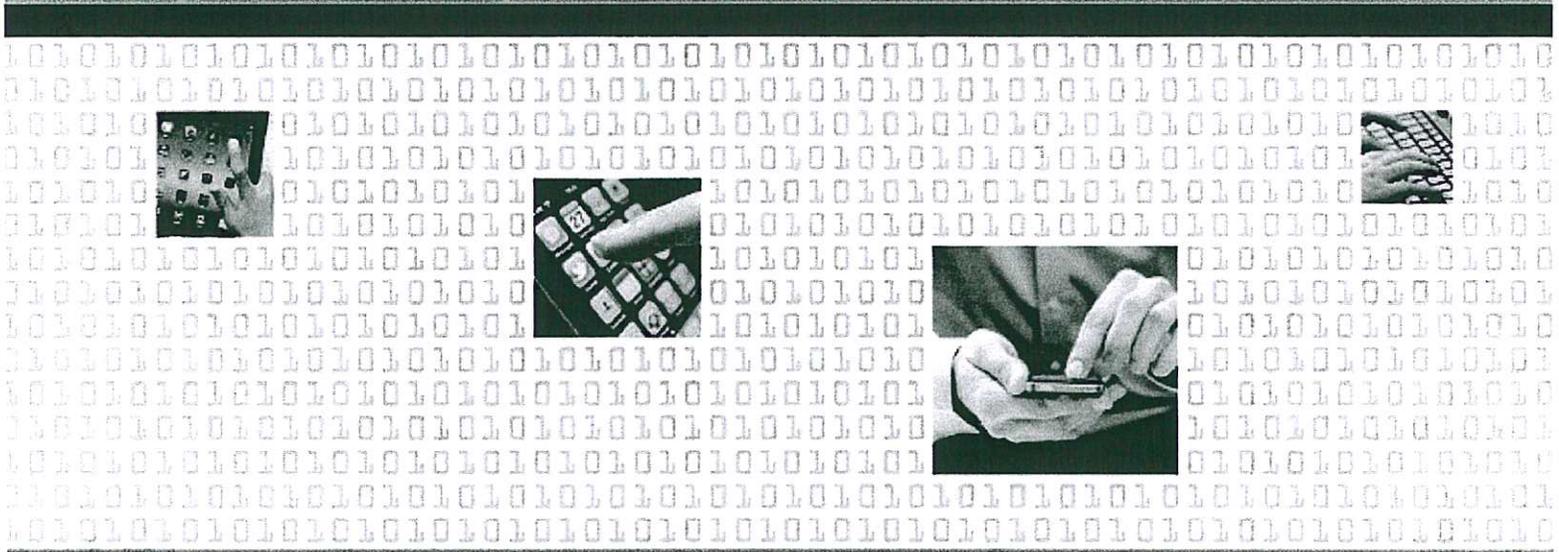


Risk Placement Services, Inc.



Powered by **LLOYD'S**

Cyber Insurance Quotation



Frequently Asked Questions

Do you have any questions about your insurance? The frequently asked questions below are here to help you make an informed decision.

What is Cyber Insurance?

"Cyber" insurance is insurance coverage specifically designed to protect a business or organization from a range of threats and incidents relating to a breach event including:

- Liability claims involving the unauthorized release of information for which the organization has a legal obligation to keep private
- Liability claims alleging invasion of privacy and/or copyright/trademark violations in a digital, online or social media environment
- Liability claims alleging failures of computer security that result in deletion/alteration of data, transmission of malicious code, denial of service, etc.
- Defense costs in State or Federal regulatory proceedings that involve violations of privacy law; and
- The provision of expert resources and monetary reimbursement to the Insured for the out-of-pocket (1st Party) expenses associated with the appropriate handling of the types of incidents listed above

The term "Cyber" implies coverage only for incidents that involve electronic hacking or online activities, when in fact this product is much broader, covering private data and communications in many different formats – paper, digital or otherwise.

What does Privacy Liability (including Employee Privacy) cover?

The Privacy Liability aspect of the insuring agreement in our policy goes beyond providing liability protection for the Insured against the unauthorized release of Personally Identifiable Information (PII), Protected Health Information (PHI), and corporate confidential information of third parties and employees, like most popular "Data Breach" policies. Rather, our policy provides true Privacy protection in that the definition of **Privacy Breach** includes violations of a person's right to privacy, etc. Because information lost in every data breach may not fit State or Federal-specific definitions of PII or PHI, our policy broadens coverage to help fill these potentially costly gaps. This is a key provision that truly sets the RPS policy apart from others.

What does Privacy Regulatory Claims Coverage cover?

The Privacy Regulatory Claims Coverage insuring agreement provides coverage for both legal defense and the resulting fines/penalties emanating from a **Regulatory Claim** made against the Insured, alleging a privacy breach or a violation of a Federal, State, local or foreign statute or regulation with respect to privacy regulations.

Does this policy cover regulatory investigations and/or fines related to GDPR privacy violations?

The BCS cyber policy has always provided broad **Regulatory Claim** coverage that would contemplate defense and penalties associated with unintentional violations of domestic and foreign privacy statutes. In accordance with the implementation of the EU's General Data Protection Regulation, BCS added clarifying language to the policy form under the definitions of **Privacy Regulations** and **Private Information** to specifically reference coverage for GDPR by name (subject to policy terms and conditions). It is important to note that fines and penalties may not be insurable by law in certain U.S. States and in certain foreign countries, including some member countries of the European Union.

Does this policy cover regulatory investigations and/or fines related to privacy violations of the California Consumer Privacy Act (CCPA) or the Biometric Information Privacy Act (BIPA) in Illinois?

As the nature and complexity of privacy laws continues to expand across not only the U.S., but the world, the BCS policy is well positioned to address these concerns, where insurable by law. Both the California Consumer Privacy Act and the Biometric Information Privacy Act are examples of the “future-proof” nature of coverage afforded under the policy’s broad definition of **Privacy Regulations**. For instance, some insurers have issued endorsements to their policies to carve back coverage for CCPA in their anti-trust exclusions. The BCS policy has already contemplated this via carvebacks for **Regulatory Claims**, so no change of that nature is necessary. Further, some carriers have endorsed their forms to carve back coverage for CCPA in their Wrongful Collection or Gathering or Distribution of Information exclusion. No such exclusion exists in the BCS form, making an additional endorsement of this nature unnecessary. Lastly, with respect to covering the unlawful collection of, or protection of biometric information, the definition of **Private Information** in the BCS form is significantly broader than many competing forms, thus, information of this nature is inherently contemplated in the coverage.

What does Security Breach Response Coverage cover?

This 1st Party coverage reimburses an Insured for costs incurred in the event of a security breach of personal, non-public information of their customers or employees. Examples include:

- The hiring of a public relations consultant to help avert or mitigate damage to the Insured’s brand
- IT forensics, customer notification and 1st Party legal expenses to determine the Insured’s obligations under applicable Privacy Regulations
- Credit monitoring expenses for affected customers for up to 12 months and longer if circumstances require.

The BCS policy can also extend coverage even in instances where there is no legal duty to notify if the Insured feels that doing so will mitigate potential brand damage (such voluntary notification requires prior written consent).

What does Security Liability cover?

The Security Liability insuring agreement provides coverage for the Insured for allegations of a **Security Wrongful Act**, including:

- The inability of a third-party, who is authorized to do so, to gain access to the Insured’s computer systems
- The failure to prevent unauthorized access to or use of a computer system, and/or the failure to prevent false communications such as phishing that results in corruption, deletion of or damage to electronic data, theft of data and denial of service attacks against websites or computer systems of a third party
- Protects against liability associated with the Insured’s failure to prevent transmission of malicious code from their **Computer System** to a third party’s **Computer System**

What does Multimedia Liability cover?

The Multimedia Liability insuring agreement provides coverage against allegations that include:

- Defamation, libel, slander, emotional distress, invasion of the right to privacy, copyright and other forms of intellectual property infringement (patent excluded) in the course of the Insured’s communication of **Media Content** in electronic (website, social media, etc.) or non-electronic forms

Other “Cyber” insurance policies often limit this coverage to content posted to the Insured’s website. Our policy extends what types of media are covered as well as the formats where this information resides.

What does Cyber Extortion cover?

The **Cyber Extortion** insuring agreement provides:

- Expense and payments (including ransom payments if necessary) to a third party to avert potential damage threatened against the Insured such as the introduction of malicious code, system interruption, data corruption or destruction or dissemination of personal or confidential corporate information

Ransomware is among the most reported types of cybersecurity incidents. Verizon's 2018 Data Breach Investigations Report (DBIR) indicated that ransomware is the most common type of malware, found in 39 percent of malware-related data breaches – double of the amount reported in last year's DBIR. Investigation and other expenses associated with ransomware events are contemplated under the **Cyber Extortion** insuring agreement. Additionally, Symantec's 2018 Internet Security Threat Report indicated that 2017 brought a 46% increase in new ransomware variants. Having the proper team in place to help you navigate the intricacies of a ransomware attack is critical and the RPSCyber policy provides this through the **Cyber Extortion** coverage

What does Business Income and Digital Asset Restoration cover?

The Business Income and Digital Asset Restoration insuring agreement provides for lost earnings and expenses incurred because of a **Network Disruption**, or, an authorized third-party's inability to access a **Computer System**. The policy will also cover for lost business as a result of a loss of reputation caused by any failure or disruption to **Computer Systems. Restoration Costs** to restore or recreate digital (not hardware) assets to their pre-loss state are provided for as well. What's more, the definition of **Computer System** is broadened to include not only systems under the Insured's direct control, but also systems under the control of a **Service Provider** with whom the Insured contracts to hold or process their digital assets. Many competing Cyber insurance forms require that a **Security Breach** take place in order for Business Interruption coverage to respond. The BCS form is unique in that the definition of **Network Disruption** is extremely broad and includes any unplanned failure, interruption or degradation of the operation of your **Computer System** or the **Computer System** of an IT service provider – whether it was caused by a **Security Breach** or otherwise. The BCS policy further differentiates itself by taking this expansion of coverage a step further. In addition to IT service providers, coverage for **Network Disruption** is provided (on a sub-limited basis) to **Outsourced Providers**, that is, any provider, other than an IT **Service Provider**, that provides services (other than IT services) for you, pursuant to a written contract. This expanded coverage is offered without the need for additional underwriting and is sometimes referred to as "Supply Chain Business Interruption".

What is Systems Integrity Restoration coverage?

A sub-section of the **Business Income and Digital Asset Restoration** insuring agreement, **Systems Integrity Restoration Loss** provides a sub-limit for costs associated with replacement of an Insured's **Computer System** directly impacted by a **Security Compromise**.

What is "PCI-DSS Assessment" coverage?

The Payment Card Industry Data Security Standard (PCI-DSS) was established in 2006 through a collaboration of the major credit card brands as a means of bringing standardized security best practices for the secure processing of credit card transactions. Merchants and service providers must adhere to certain goals and requirements in order to be "PCI Compliant," and certain specific agreements, may subject an Insured to an "assessment" for breach of such agreements. The RPS Cyber Policy responds to **PCI Assessments** as well as claims expenses in the wake of a breach involving cardholder information. Additionally, this coverage provides for expenses associated with a mandatory audit performed by a Qualified Security Assessor (QSA), certified by the PCI Security Standards Council, to show you are PCI DSS compliant, following a **Security Breach**.

What is Cyber Deception coverage?

The **Cyber Deception** extension is purchased for an additional premium if the applicant is eligible. The extension provides coverage for the intentional misleading of the Applicant by means of a dishonest misrepresentation of a material fact contained or conveyed within an electronic or telephonic communication(s) and which is relied upon by the Applicant believing it to be genuine. This is commonly known as spear-phishing or social engineering, and, along with ransomware events, is among the most reported incidents to the BCS Cyber policy. Many Cyber policies offering this coverage require that the insured call back, or, attempt to verify the request's authenticity via a method other than the original means. In other words, if a request to transfer money to a different bank routing number is received via email, other Cyber policies may require that the person receiving the email attempt to verify the request also via telephone before authorizing the transfer of money. While the application process asks a question regarding controls in place for this, the BCS policy differentiates itself further by not requiring this of insureds in the policy wording. Additionally, this coverage provides for the loss of money from the Insured's account, or, the loss of money held on behalf of the Insured's customers or clients (aka funds held in escrow). The BCS policy does not presently offer **Cyber Deception** coverage to financial institutions or title agents.

What is Telephone Hacking coverage?

Telephone Hacking coverage is included in the **Electronic Fraud** sub-section of the BCS policy. It provides a sub-limit of coverage for the intentional, unauthorized and fraudulent use of your **Telecommunications Services** (ie: telephone, fax, broadband or other data transmission services that you purchase from third parties) that results in unauthorized calls or unauthorized use of your bandwidth.

What is Funds Transfer Fraud coverage?

Funds Transfer Fraud coverage is available in the **Electronic Fraud** sub-section of the BCS policy for insureds who are NOT classified as Financial Institutions (Financial Institutions includes Community, State or Credit Unions, as well as National Financial Institutions, Banks, etc.) or Title/Escrow/Settlement/Closing Agents or Agencies. For those organizations who are not in the Financial Institution or Title/Escrow/Settlement/Closing Agents or Agencies classifications, the coverage provides coverage for unauthorized electronic funds transfer, theft of your money or other financial assets from your bank by electronic means, theft of your money or other financial assets from your corporate credit cards by electronic means, or any fraudulent manipulation of electronic documentation while stored on your **Computer System**. This should not be confused with **Cyber Deception** coverage which requires a willful release of funds (not theft) based on a fraudulent instruction the insured believes to be true.

What is Phishing coverage?

Coverage for **Phishing Loss** is available in the **Electronic Fraud** sub-section of the BCS policy. The coverage provides reimbursement to the Insured when they are unable to collect a receivable due to them because of a third party's impersonation of them via email or other electronic means. This is often experienced when the Insured's system is compromised and a fraudster sends out an invoice, purporting to come from the Insured, however, payment routing information is changed to divert funds to the fraudster who is executing the crime. As a result, customers pay over amounts owed to fraudulent accounts, instead of to the Insured's account, and the Insured is unable to collect the monies owed to them.

What is Services Fraud Loss coverage?

Services Fraud Loss is provided in the **Electronic Fraud** sub-section of the BCS policy. "Cryptojacking" is an illegal activity on the rise whereby hackers infiltrate an Insured's system and utilize the computing power of the network they have taken over in order to mine digital currencies. This vast increase in the infiltrators' computing resources can lead to excessive bandwidth charges that the Insured could unknowingly incur as a result of the incident. **Services Fraud Loss** will also reimburse the Insured in the event their **Computer System** is taken over by a third party and they incur charges associated with the unauthorized use of Software-as-a-Service (SaaS), Infrastructure-as-a-Service (IaaS), Network-as-a-Service (Naas) or IP telephony.

What is Reward Fund Loss coverage?

Also provided in the **Electronic Fraud** sub-section of the BCS policy, **Reward Fund Loss** provides reimbursement to the Insured (subject to prior underwriter consent) for monies they pay for information that leads to the arrest and conviction of any individuals committing or trying to commit an illegal act associated with a covered **Event** in the policy.

What is Personal Financial Loss coverage?

Personal Financial Loss, provided in the **Electronic Fraud** sub-section of the BCS policy, reimburses senior executive officers of the Insured for theft of money or other financial assets from their personal bank account, or identity theft of a senior executive officer, resulting from a covered **Security Breach** or **Security Compromise**.

What is Court Attendance Costs coverage?

Within the definition of **Claims Expenses**, **Court Attendance Costs** provides the Insured for reasonable sums they incur (with prior written agreement) to attend court or any tribunal, arbitration, adjudication, mediation or other hearing in connection with any covered **Claim** to which the Insured is entitled to a defense under the policy.

What is Bodily Injury and Property Damage Liability coverage?

Typically, Cyber insurance policies carry absolute exclusions for **Bodily Injury** and **Property Damage** liability. The BCS policy provides a sub-limit of coverage for liabilities associated with **Bodily Injury** and/or **Property Damage** if resulting from a **Claim** described in the **Privacy Liability** or **Security Liability** insuring agreements.

What is TCPA coverage?

The Telephone Consumer Protection Act (TCPA) is a law passed by the U.S. Congress in 1991 that amends the Communications Act of 1934. TCPA restricts telephone solicitations and the use of automated telephone equipment, automatic dialing systems, artificial or prerecorded voice messages, SMS text messages and other unsolicited means of communications. Most Cyber liability insurance policies carry a strict TCPA exclusion. The BCS policy provides a sub-limit of coverage for TCPA allegations and provides this coverage for both **Damages** and/or **Claims Expenses** – a clear differentiator in the marketplace.

What is HIPAA Corrective Action Plan coverage?

Part of the **Regulatory Liability Claims Coverage** insuring agreement, **HIPAA Corrective Action Plan Costs** are costs the Insured is obligated to pay to meet any of the requirements specified within a HIPAA corrective action plan resulting from a **Regulatory Claim** covered by the policy. Examples of costs incurred in this regard could include conducting a risk analysis, implementing risk management plans to mitigate future risk, revision of policies and procedures related to the HIPAA Security Rule, implementation of training programs and more.

What is Post Breach Response coverage?

Part of the **Breach Response Costs** definition, **Post Breach Response** provides the Insured a sub-limit of coverage (with prior consent, and utilizing pre-approved vendors) for costs incurred for the revision of an incident response plan, the completion of a network security audit, an information security risk assessment, and/or the implementation of a security awareness training program.

What is Independent Consultant coverage?

An extension of the **Business Income Loss** definition, this coverage provides for necessary costs to retain an independent consultant to determine the amount of an Insured's **Business Income Loss**.

What is Outsourced Provider coverage?

The policy provides a sub-limit of coverage for **Business Income Loss** resulting from a **Network Disruption** that occurs on an **Outsourced Provider's Computer System**. Outsourced Providers are businesses the Insured works with that perform services other than IT services, pursuant to a written contract. Also known as system failure coverage for "supply chain" partners, the coverage afforded under these terms is among the broadest in the industry.

What is Computer Hardware coverage?

Found within the definition of **Restoration Costs**, the policy will provide for reasonable and necessary costs to install a more secure and efficient version of the Insured's **Computer System** up to 25% more than the cost would have been to replace the original model, subject to a sub-limit of coverage for hardware replacement.

Who is RPS?

With offices throughout the United States, Risk Placement Services empowers insurance agents and brokers like yours with product and industry expertise, and access to exclusive Property & Casualty insurance coverage for their clients throughout the country. RPS is the exclusive Managing General Agent for the specialized Cyber insurance quotation your agent has provided herein. RPS is consistently recognized by Business Insurance magazine as the nation's largest Managing General Agency. RPS is also honored to be named the winner of the Business Insurance "2018 Insurtech Initiative of the Year" award. Your agent's decision to partner with RPS speaks of their desire to provide your organization with the best insurance solutions available in the marketplace today.

How is this policy better than other options in the marketplace?

As with any insurance policy, what sets our coverage apart lies in the definitions and exclusions in the policy. The RPS Cyber Policy offers broader definitions of critical terms such as **Privacy Breach**, **Computer System**, and **Media Content**. Additionally, the BCS policy provides industry-leading coverage in the area of Business Interruption. These definitions, along with the absence of some industry-standard exclusions and a drastically streamlined application process, make this policy more comprehensive and easier to access than the typical Cyber policy available from traditional sources.

Isn't this already covered under most business insurance plans?

The short answer is "No". While liability coverage for data breach and privacy claims has been found in limited instances through General Liability, Commercial Crime and some D&O policies, these forms were not intended to respond to the modern threats posed in today's 24/7 information environment. Where coverage has been afforded in the past, carriers (and the ISO) are taking great measures to include exclusionary language in form updates that make clear their intentions of not covering these threats. Additionally, even if coverage can be found in rare instances through other policies, they lack the expert resources and critical 1st Party coverages that help mitigate the financial, operational and reputational damages a data breach can inflict on an organization.

Are businesses required to carry this coverage?

While there is presently no law that requires a business or organization to carry Cyber Liability, there is a national trend in business contracts for proof of this coverage. In addition, the SEC and other regulatory bodies are encouraging disclosure of this coverage as a way of demonstrating sound information security risk management. Laws such as HIPAA-HITECH, GDPR, Gramm-Leach-Bliley and state-specific data breach laws are continually driving demand as requirements for notification in the wake of a data breach become more expensive, and expectations around the level of response by an impacted organization are increased.



Do small businesses need this coverage?

A recent Ponemon Institute report uncovered that 50% of small and medium sized US businesses had suffered a data breach, with 55% suffering a cyber-attack, with the most prevalent attack being non-sophisticated phishing attempts. The US National Cyber Security Alliance has advised that 60% of small companies are out of business within 6 months after being hacked. While breaches involving public corporations and government entities garner the vast majority of headlines, it is the small business that can be most at risk. With lower information security budgets, limited personnel and greater system vulnerabilities, small businesses are increasingly at risk for a data breach. In the past, many small business owners in the SME space were reluctant to purchase Cyber liability insurance coverage because they did not see themselves as data rich targets. Today's trends are showing that much of the data breach and ransomware attacks in today's business environment are indiscriminant of industry or size. Random attacks distributed to thousands of unknown recipients with the hopes of snaring just a limited number have caused business owners of all sizes and descriptions to re-think their approach to this huge risk and purchase insurance to mitigate the effects.

If e-commerce functions such as payment processing or data storage are outsourced, is this coverage still needed?

The responsibility to notify customers of a data breach or legal liabilities associated with protecting customer data, remain the responsibility of the Insured. Generally speaking, business relationships exist between Insureds and their customers, not their customers and the back-office vendors the Insured uses to assist them in their operations. Outsourcing business critical functions such as payment processing, data storage, website hosting, etc. can help insulate Insureds from risk, however, the contractual agreement wording between Insureds, their customers and the vendors with whom they do business will govern the extent to which liability is assigned in specific incidents.

What is the cost of not buying the coverage and self-insuring a data breach?

The Ponemon Institute, a well-known research firm, publishes an annual "Cost of a Data Breach" report. In partnership with IBM, the 2017 report indicated that the average cost paid for each lost or stolen record is \$148. These numbers are reflective of both the indirect expenses associated with a breach (time, effort and other organizational resources spent during the data breach resolution, customer churn, etc.), as well as direct expenses (customer notification, credit monitoring, forensics, hiring a law firm, etc.). The 2018 cost reflects a 6.4% increase over the 2017 report.

In 2018, the average total cost of a data breach, globally, rose to \$3.86 million dollars. The likelihood of a recurring breach to a business within two years was a staggering 27.9%. More information can be found in the "2018 Cost of Data Breach" study by Ponemon: www.ibm.com/security/data-breach .

In addition, the cost of breaches has evolved from just the cost of notification to now include ransom demands, business income loss, theft, and associated liability costs. These additional factors have also contributed to driving up the potential financial impact of a breach incident.

Who is the insurance carrier?

The BCS Cyber and Privacy Liability Policy is underwritten by BCS Insurance Company and powered by and with the backing of certain syndicates at Lloyd's of London. BCS Insurance Company is a licensed, admitted insurance company in all states and the District of Columbia. The BCS Cyber policy is admitted in every state except VT. BCS Insurance Company provides value through a solid foundation of strong governance, national and international capabilities and product and industry expertise and is rated A- (Excellent) by A.M. Best. BCS Insurance has been in business for over 60 years. It is a wholly owned subsidiary of BCS Financial Corporation which, in turn, is owned by all Blue Cross Blue Shield primary licensees. BCS Insurance Company's relationship with certain syndicates at Lloyd's of London brings additional strength, stability and industry-leading expertise to the RPS cyber insurance program. BCS was recognized by A.M. Best as the #6 Standalone Cyber Insurer in 2018, according to direct written premium, in their 2019 Best's Market Segment Report.

What is the claims-handling process?

A 24-hour data breach hotline is available to report incidents or even suspected incidents. As soon as you suspect a data breach incident or receive notice of a claim, you should call the hotline listed in your policy. This hotline is manned by a world-wide leading privacy law firm with experience in handling thousands of data breach events. Immediately after calling the hotline, you are required to send notice to Clyde & Co., the designated legal firm that has been contracted to triage initial notices in this regard. This can be done by sending an email with a brief description of the incident, including your contact information, to the claims-reporting email address listed in your policy. Your RPS broker will receive notification of the incident (or any third-party claim) as well. It is critical that you immediately report any and all incidents that you believe could give rise to a claim of any kind under this policy. You can expect the privacy law firm to manage all breach response related activities associated with data/privacy incidents. It is also likely that interaction with representatives from Clyde & Co will occur throughout the claims process for matters concerning coverage applicability, retentions, reimbursements and payment to vendors.

The information and descriptions contained in this FAQ are intended as general information and are not complete descriptions of all terms, exclusions and conditions applicable to the products and services offered by Risk Placement Services or any insurance company represented by us. This is not a guarantee of coverage. The information contained throughout this summary is not an insurance policy or contract of insurance. The insurance coverage afforded by RPS is subject to the terms and conditions of the policies as issued. This discussion is not legal advice. RPS does not provide legal advice and highly recommends that insureds seek legal advice of qualified legal counsel in order to become fully apprised of the legal implications related to these issues.



BCS Insurance Company
 2 Mid America Plaza, Suite 200
 Oakbrook Terrace, IL 60181
 (312) 803-7384

(A stock insurance company, herein the "Company")

Policy No. RPS-Q-0710930M/1

Cyber and Privacy Liability Insurance Policy

94.111 MI (07/19)

THIS POLICY IS EXEMPT FROM THE FILING REQUIREMENTS OF SECTION 2236 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL 500.2236. NOTICE: THE POLICY CONTAINS ONE OR MORE COVERAGES. CERTAIN COVERAGES ARE LIMITED TO LIABILITY FOR CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND NOTIFIED TO US DURING THE POLICY PERIOD AS REQUIRED. CLAIMS EXPENSES SHALL REDUCE THE APPLICABLE LIMITS OF LIABILITY AND ARE SUBJECT TO THE APPLICABLE RETENTION (S). PLEASE READ THIS POLICY CAREFULLY.

MICHIGAN POLICY DECLARATIONS

ITEM 1.	NAMED INSURED	City of Boyne City
	ADDRESS	319 N Lake St , Boyne City, Michigan, 49712-2109
ITEM 2.	POLICY PERIOD	FROM: September 24, 2019 TO: September 24, 2020 (12:01 A.M. Standard time at the address shown in Item 1.)
ITEM 3.	POLICY LIMITS OF LIABILITY AND COVERAGES PURCHASED	I. Aggregate Limit of Liability: \$1,000,000 (Aggregate for Each and Every Claim or Event including Claims Expenses) II. Sublimit of Liability for Individual Coverage(s) Purchased: \$1,000,000 "Nil" or "N/A" Sublimit of Liability for any coverage indicates that the coverage was not purchased

COVERAGE	PER CLAIM SUBLIMIT OF LIABILITY INCLUDES CLAIM EXPENSES	AGGREGATE SUBLIMIT OF LIABILITY
A. Privacy Liability (including Employee Privacy)	\$1,000,000	\$1,000,000
B. Privacy Regulatory Claims Coverage	\$1,000,000	\$1,000,000
C. Security Breach Response Coverage	\$1,000,000	None
D. Security Liability	\$1,000,000	\$1,000,000
E. Multimedia Liability	\$1,000,000	\$1,000,000
F. Cyber Extortion	\$1,000,000	None
G. Business Income and Digital Asset Restoration		



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1. Business Income Loss	\$1,000,000	None
2. Restoration Costs	\$1,000,000	None
3. Reputation Business Income Loss	\$1,000,000	None
4. Systems Integrity Restoration Loss *	\$250,000	None
H. PCI DSS Assessment	\$1,000,000	\$1,000,000
I. Electronic Fraud		
1. Phishing Loss	\$50,000	None
2. Services Fraud Loss	\$100,000	None
3. Reward Fund Loss	\$50,000	None
4. Personal Financial Loss	\$250,000	None
5. Corporate Identify Theft Loss	\$250,000	None
6. Telephone Hacking Loss	\$100,000	None
7. Direct Financial Loss (Funds Transfer Fraud)	\$100,000	N/A
8. Cyber Deception**	\$100,000	N/A

* e.g. bricking

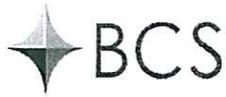
** e.g. social engineering

III. Supplemental Limits

COVERAGE	SUBLIMIT OF LIABILITY
A. Court Attendance Costs	\$100,000
B. Bodily Injury / Property Damage Liability	\$250,000
C. TCPA	\$100,000
D. HIPAA Corrective Action Plan Costs	\$50,000
E. Post Breach Response	\$25,000
F. Independent Consultant	\$25,000
G. Outsourced Provider	\$250,000
H. Computer System	\$250,000

ITEM 4. RETENTION (including Claims Expenses):

COVERAGE	EACH CLAIM OR EVENT	AGGREGATE RETENTION AMOUNT
A. Privacy Liability (including Employee Privacy)	\$2,500	\$2,500
B. Privacy Regulatory Claims Coverage	\$2,500	\$2,500
C. Security Breach Response Coverage	\$2,500	\$2,500



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D. Security Liability	\$2,500	\$2,500
E. Multimedia Liability	\$2,500	\$2,500
F. Cyber Extortion	\$2,500	\$2,500
G. Business Income and Digital Asset Restoration	\$2,500	\$2,500
H. PCI DSS Assessment	\$2,500	\$2,500
I. Electronic Fraud		
1. Phishing Loss	\$2,500	\$2,500
2. Services Fraud Loss	\$2,500	\$2,500
3. Reward Fund Loss	\$2,500	\$2,500
4. Personal Financial Loss	\$2,500	\$2,500
5. Corporate Identify Theft Loss	\$2,500	\$2,500
6. Telephone Hacking Loss	\$2,500	\$2,500
7. Direct Financial Loss (Funds Transfer Fraud)	\$2,500	\$2,500
8. Cyber Deception	\$5,000	\$5,000

ITEM 5. PREMIUM	\$1,544.00
CYBER DECEPTION PREMIUM:	\$77.00 (IF ELECTED)
TOTAL:	\$1,621.00

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ITEM 6. TERRITORIAL LIMITS	Worldwide
ITEM 7. RETROACTIVE DATE	Full Prior Acts
ITEM 8. NOTICE OF CLAIM	<u>2 Steps:</u>

1. Call Baker Hostetler at the 24 Hour Security Breach Hotline: 1-866-288-1705
2. File your claim with:

rpscyberclaims@clydeco.us
 Clyde & Co. US LLP
 101 Second Street, 24th Floor
 San Francisco CA 94105
 USA

ITEM 9. SERVICE OF SUIT	Risk Situated in California: Eileen Ridley FLWA Service Corp. c/o Foley & Lardner LLP
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City of Boyne City

MEMO

Date: October 23, 2018

To: Mayor Neidhamer and the Boyne City City Commission

From: Michael Cain, City Manager

Subject: Property and Liability Insurance Coverage Renewal

In 2005 the City switched our property and liability insurance coverages from the Michigan Municipal Leagues' Liability and Property pool, after quite a long time with them, to the Michigan Township Participating Plan, which is represented by Paul Olson. At that time our annual premium went from \$105,259 to \$82,273. Since then our rates have been: \$85,065, \$88,789, \$88,454, \$76,572, \$58,414, \$55,632, \$59,336, \$62,351 \$59,328, \$60,586, \$62,726 and \$66,195 for our current coverage year which ends on October 30th. Assuming the League's rates had stayed fairly constant (there was usually an annual increase) we have saved about \$462,646 by switching insurance providers, and ended up with equivalent, if not better coverages, 13 years ago.

Every few years we have obtained quotes from different providers to make sure we are getting good rates. We did this four years ago and our current carrier came in with a rate some \$7,000 less than the next lowest provider. I ask around and am not aware of any significant change in the market since then.

Attached is a quotation from our current provider, Municipal Underwriters of Michigan, Inc. for the coming year and their included coverages. The price for the coming year has increased about 5% by \$3,718 to an estimated \$69,913. I say estimated because this price will go up or down slightly as we add or subtract equipment or property during the course of the year, as it would with any carrier. The proposed cost now is about 67% of the \$105,259 we paid to the Michigan Municipal League's program the last year we were with them in 2004-2005.

We have been very happy with all the services provided by the MTPP since I first recommended we switch to them in 2005. They continue to provide outstanding service and coverage. They are very easy to work with. Five years ago we received a grant from the insurance company's risk reduction program in the amount of \$4,700 for the purchase of a computer storage system for our Police Department. We continue to qualify to apply for future grants and for their annual dividend program, which may reduce our actual annual cost even further by refunding a portion of a previous payment back to us. This past year it saved us about \$1,500.

A program they are again offering is to lock the rate for our coverage (not the actual cost which could increase or decrease based on the whether we are adding or decreasing the value of items we are insuring – like adding equipment or property) at the current rate for three years. They would maintain our rates during that period as long as our Account Loss Ratio does not exceed 18% at the nine months and 24% at 21 months. This is an optional endorsement that does not cost us extra and does not keep us from changing carriers at any time should we choose to do so. I see no reason why we would not want to obtain this endorsement. If something changed in the market where we thought we could get a better deal by

getting quotes earlier we could shop and switch if we desired.

RECOMMENDATION: That the City Commission authorize the City Manager and the City Clerk/Treasurer to take the steps necessary to renew the City's liability insurance through the Michigan Township Participating Plan and obtaining the three year rate guarantee endorsement at an estimated price of \$69,913 for 2018-2019.

- Options:
- A. Postpone for further review and/or information.
 - B. Renew for 2018-2019 at an estimated \$69,913 without the rate guarantee.
 - C. Postpone to seek other quotations.
 - D. Other options as determined by the City Commission

October 2019

October 2019							November 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Sep 29	30	Oct 1 5:00pm ZBA	2	3 8:30am Main Street Board mtg.	4	5
6	7	8 7:00pm City Commission	9	10 5:00pm Parks & Rec	11	12
13	14 12:00pm EDC/LDFA Meeting	15 Marina Closes	16	17	18	19
20	21 5:00pm Planning Commission	22 12:00pm City Commission	23	24 5:30pm Airport Advisory Board	25	26
27	28	29	30	31 5:00pm Trick or Treat	Nov 1	2

November 2019

November 2019							December 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2	1	2	3	4	5	6	7
3	4	5	6	7	8	9	8	9	10	11	12	13	14
10	11	12	13	14	15	16	15	16	17	18	19	20	21
17	18	19	20	21	22	23	22	23	24	25	26	27	28
24	25	26	27	28	29	30	29	30	31				

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Oct 27	28	29	30	31	Nov 1	2
3	4	5 5:00pm ZBA	6	7 8:30am Main Street Board mtg.	8	9
10	11 11:00am Veterans Day Ceremony 12:00pm EDC/LDFA	12 7:00pm City Commission	13	14 5:00pm Parks & Rec	15	16
17	18 5:00pm Planning Commission	19	20	21 5:00pm Historic District	22 5:00pm Holiday Open House 6:00pm Santa Parade	23
24	25	26 12:00pm City Commission	27	28 City Offices Closed Thanksgiving 2:30pm Thanksgiving Dinner (Eagles Hall) 5:30pm Airport Advisory	29 City Offices Closed	30