



## REGULAR MEETING OF THE DOWAGIAC CITY COUNCIL

Municipal Building, 241 S. Front Street, Dowagiac, Michigan

Monday, January 25, 2016, 7:00 p.m.

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### AGENDA

- CALL TO ORDER -Mayor Donald D. Lyons
- PLEDGE OF ALLEGIANCE TO THE FLAG -Mayor Donald D. Lyons
- ROLL CALL -Mayor Donald D. Lyons  
-Mayor Pro-Tem Leon Laylin  
-Councilmember Charles Burling  
-Councilmember James Dodd  
-Councilmember Danielle Lucas  
-Councilmember Lori Hunt  
-Councilmember Bob Schuur
- APPROVAL OF MINUTES OF PREVIOUS MEETING – January 11, 2016
- QUESTIONS FROM CITY COUNCIL –
- COMMENTS FROM THE AUDIENCE (NON-AGENDA) –
- COMMENTS FROM THE AUDIENCE (AGENDA) –
- COMMUNICATIONS –
- RESOLUTIONS –
1. Resolution to authorize the sale of commonly referred to as 202 McCleary Street (Parcel Code No. 14-160-300-750-00) to Mr. Richard Accoe for \$600.00.
  2. Resolution to authorize the City Manager to submit an application for a 2016 Michigan Blight Elimination Grant Program with the Michigan Land Bank.
  3. Resolution to adopt a 2017 Dial-A-Ride budget.
  4. Resolution calling for the repeal of Michigan Law, Section 57, subsection (3) of PA 269 of 2016 that prohibits local governments from sharing information with the public 60 days prior to an election.
  5. Resolution authorizing a lease and construction of 2,409 square feet of space in James E. Snow Professional Building to the Van Buren/Cass District Health Department.

6. Resolution confirming construction budget and authorization for buildout of Suite C of the James E. Snow Professional Building.
7. Resolution to authorize the payment of bills:

<u>BILLS</u>	<u>PAYROLL</u>	<u>TOTAL</u>
\$586,686.48	\$194,308.69	\$780,995.17

#### ORDINANCES

1. Second Reading of an ordinance to add Section 2.28 GROUNDWATER USE RESTRICTIONS to the Dowagiac Municipal Code.

#### COMMENTS FROM CITY OFFICIALS –

#### ADJOURNMENT –

Kevin P. Anderson  
City Manager

Attachments

## DOWAGIAC CITY COUNCIL MEETING

Monday, January 11, 2016

A regular meeting of the Dowagiac City Council was called to order by Mayor Lyons at 7:00 p.m.

Mayor Lyons led the Pledge of Allegiance to the flag.

PRESENT: Mayor Donald D. Lyons, Mayor Pro-Tem Leon D. Laylin; Councilmembers Charles K. Burling, James B. Dodd, Bob B. Schuur and City Clerk Jane P. Wilson

ABSENT: Councilmembers Lori A. Hunt and Danielle E. Lucas

STAFF: City Manager Kevin P. Anderson, HR Director/Deputy Clerk Rozanne H. Scherr, Finance Director Becky Grabemeyer, Public Safety Director Steve Grinnewald.

### APPROVAL OF MINUTES OF PREVIOUS MEETING

Councilmember Dodd moved and Councilmember Burling seconded that the minutes of the Regular December 14, 2015 meeting and December 18, 2015 workshop be approved.

APPROVED unanimously.

### COMMENTS FROM THE AUDIENCE (NON-AGENDA)

Public Safety Director Steve Grinnewald introduced new police officer Paige Holtz.

Cass County Prosecutor Victor Fitz, President of Prosecutors Association, presented a Prosecutor's Report on "Michigan Prisoners, Violent Crime and Public Safety."

Thurman Chennault, Dowagiac resident, requested the City Council to explain why he was not appointed to serve as an election inspector for the May 2015 and November 2015 elections, and asked the Council to reinstate him.

### COMMUNICATIONS

1. Event Request – Martin Luther King Jr. Day Celebration.
2. Event request – Memorial Day Parade.

Councilmember Schuur offered and moved the approval of the event requests; seconded by Councilmember Laylin.

3. Receive audit report for Fiscal Year 2014-15 from the independent auditing firm, Yeo & Yeo.

Councilmember Dodd offered and moved the approval of the audit report; seconded by Councilmember Laylin. Approved on a Roll Call vote.

Ayes: (4) Laylin, Burling, Dodd, Schuur

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Nays: None (0)

Absent: Two (2) Hunt, Lucas

Abstain: None (0)

### RESOLUTIONS

1. Resolution to modify the easement agreement with the Pokagon Band for the water extension project to the Band's development on Dailey Road.

Councilmember Schuur offered and moved the adoption of the following resolution; seconded by Councilmember Dodd.

**WHEREAS,** the City has worked with the Pokagon Band to provide municipal water service to their community development project on Dailey Road in LaGrange Township, and;

**WHEREAS,** an easement modification is necessary to complete the project and maintain accurate utility records,

**NOW, THEREFORE BE IT RESOLVED** that the City Manager be and hereby is authorized to execute any and all documents necessary and appropriate to effectuate said easement modification.

**ADOPTED** unanimously.

2. Resolution to authorize budget amendments for the first quarter of Fiscal Year 2015-2016.

Councilmember Laylin offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

**WHEREAS,** the City administration has reviewed the attached budgets for the 2015-16 fiscal year and the actual revenues and expenditures through the first quarter of 2015-16 fiscal year; and

**WHEREAS,** the City administration recommends revision of the attached budgets in accordance with the latest projections available; and

**WHEREAS,** the attached report for these funds indicates the current budget and the recommended budget revisions.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Dowagiac, by the affirmative vote of its City Council, does hereby adopt the attached, recommended revised budgets.

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ADOPTED on a Roll Call vote.

Ayes: (4) Laylin, Burling, Dodd, Schuur

Nays: None (0)

Absent: Two (2) Hunt, Lucas

Abstain: None (0)

3. Resolution to authorize and direct the City Treasurer to pay the following bills and payroll due:

Councilmember Schuur offered and moved the adoption of the following resolution; seconded by Councilmember Burling.

**WHEREAS**, the following information has been reviewed by the City Manager and City Treasurer and is being presented to City Council with a recommendation to approve payroll #7 and #8, and invoices for the period ending 01/07/16:

Invoices 12/23/15	\$148,276.79
Invoices 01/07/16	\$783,027.05
Payroll #7	\$189,389.31
Payroll #8	\$135,515.46
Total	\$1,256,208.61

**BE IT RESOLVED** that the City Manager and City Treasurer are hereby authorized and directed to pay the following bills and payroll due:

<u>BILLS</u>	<u>PAYROLL</u>	<u>TOTAL</u>
\$931,303.84	\$324,904.77	\$1,256,208.61

ADOPTED on a roll call vote.

Ayes: (4) Laylin, Burling, Dodd, Schuur

Nays: None (0)

Absent: Two (2) Hunt, Lucas

Abstain: None (0)

ORDINANCES

Update on pending Groundwater Ordinance – EPA has given verbal approval, once written approval is received the Ordinance will be brought forward for 2<sup>nd</sup> Reading.

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ADJOURNMENT

Upon motion by Councilmember Dodd and seconded by Councilmember Laylin, the Dowagiac City Council adjourned at 7:48 PM.

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Donald D. Lyons, Mayor

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Jane P. Wilson, City Clerk

***CITY OF DOWAGIAC***

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***MEMO TO:*** Mayor Lyons and City Council Members

***FROM:*** Kevin P. Anderson, City Manager

***DATE:*** January 22, 2016

***SUBJECT:*** Sale of Property – 202 McCleary Street

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A final form resolution is on Monday's agenda authorizing the sale of vacant property at 202 McCleary Street to Mr. Richard Accoe.

As previously discussed, Mr. Accoe submitted a bid of \$600.00 for purchase of the property. He owns adjacent property and his interest in the property is expand the size of the property on which the house currently sits.

This issue has remained "on the table" in excess of the required 21-day period since Council adoption of a resolution of intent on December 11, 2015 and no additional bids have been received.

**RECOMMENDATION**

I recommend adopting the final form resolution authorizing the sale of the vacant property at 202 McCleary Street.

Support Documents:  
Cover Memo-City Mgr.  
Resolution

**City Property Sale; 202 McCleary Street; Mr. Richard Accoe; \$600.00**

Councilmember \_\_\_\_\_ offered and moved the adoption of the following resolution, seconded by Councilmember \_\_\_\_\_.

**WHEREAS**, at the December 11, 2015 City Council meeting by way of an adopted resolution introducing same, the Dowagiac City Council approved of a final-form resolution authorizing the conveyance of City-owned, real property in accordance with the provisions of Section 14.9 of the City Charter, and the specifications outlined in the City Council Policy enacted on June 21, 1993, and;

**WHEREAS**, having now remained on file for public inspection with the Office of the City Clerk for in-excess-of the minimum twenty-one (21) day period required by the City Charter, the City of Dowagiac wishes to formally convey and sell the parcel of surplus real property legally described in Exhibit "A", commonly known as 202 McCleary Street in the City of Dowagiac, according to the recorded plat thereof, and more commonly referred to as Parcel Code No. 14-160-300-750-00, to Mr. Richard Accoe, for the total sale price of six hundred dollars (\$600.00).

**NOW, THEREFORE, BE IT RESOLVED** that the Dowagiac City Council, by the affirmative roll call vote of five or more of its City Council Members, does hereby adopt and approve the sale and conveyance of City-owned real property legally described in Exhibit "A", commonly known as 202 McCleary Street in the City of Dowagiac, according to the recorded plat thereof, and more commonly referred to as Parcel Code No. 14-160-300-750-00, to Mr. Richard Accoe, for the total sale price of six hundred dollars (\$600.00).

**BE IT FURTHER RESOLVED** that the said conveyance shall be accomplished by means of the transfer of a Quit-claim Deed, as prepared by the City Attorney, signed by the Mayor and Clerk respectively of the City of Dowagiac, and executed within thirty (30) days following adoption of this resolution.

ADOPTED/REJECTED

Richard J Accoe

54461 Twin Lakes Rd

Dowagiac, Mi 49047

November 16, 2015

Kevin Anderson

Dowagiac City Manager

I am interested in purchasing the ½ lot at 202 McCleary ST. Dowagiac. It adjoins property my wife owns at 501 Keene Ave.

I would offer \$600 for the property.

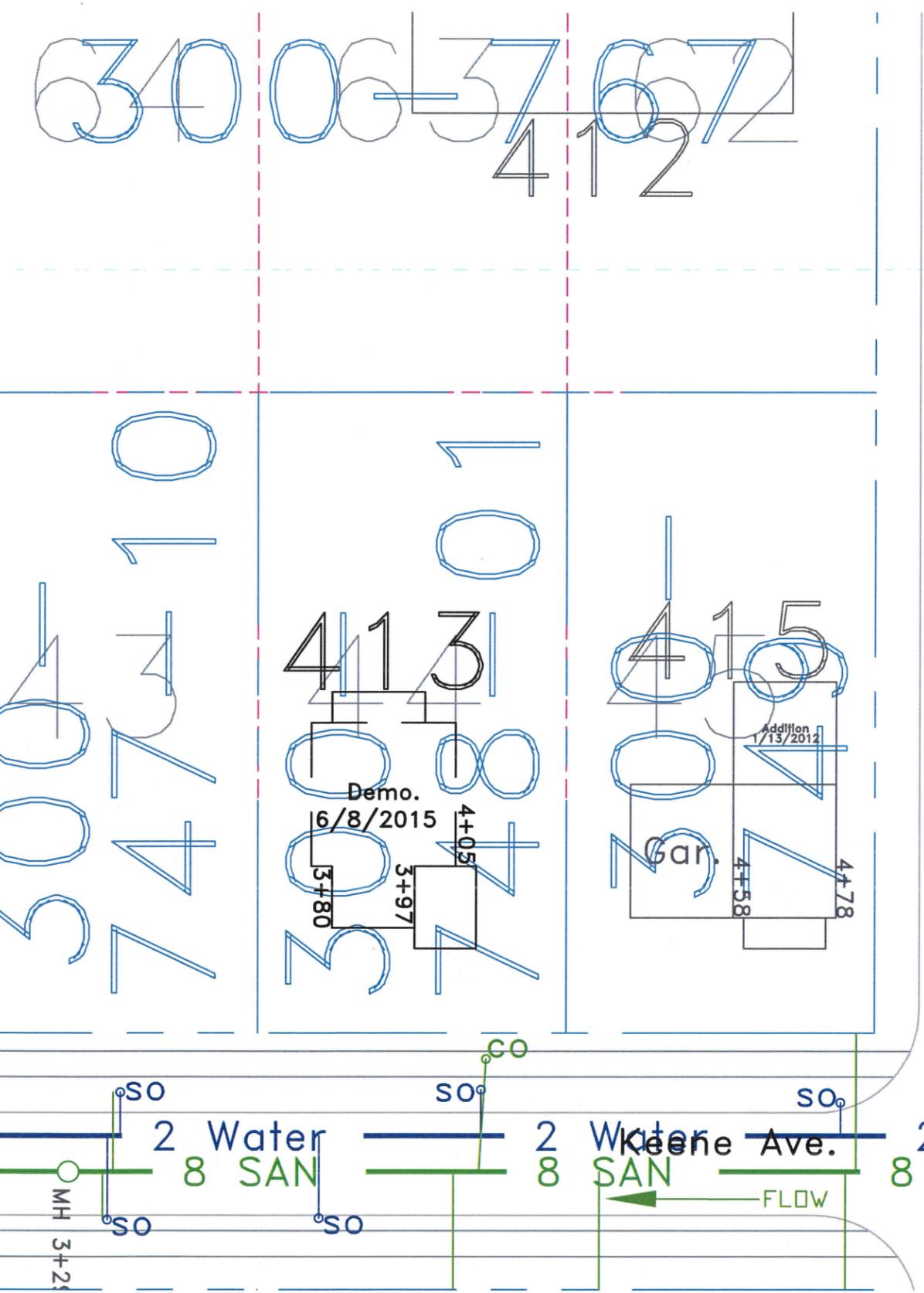
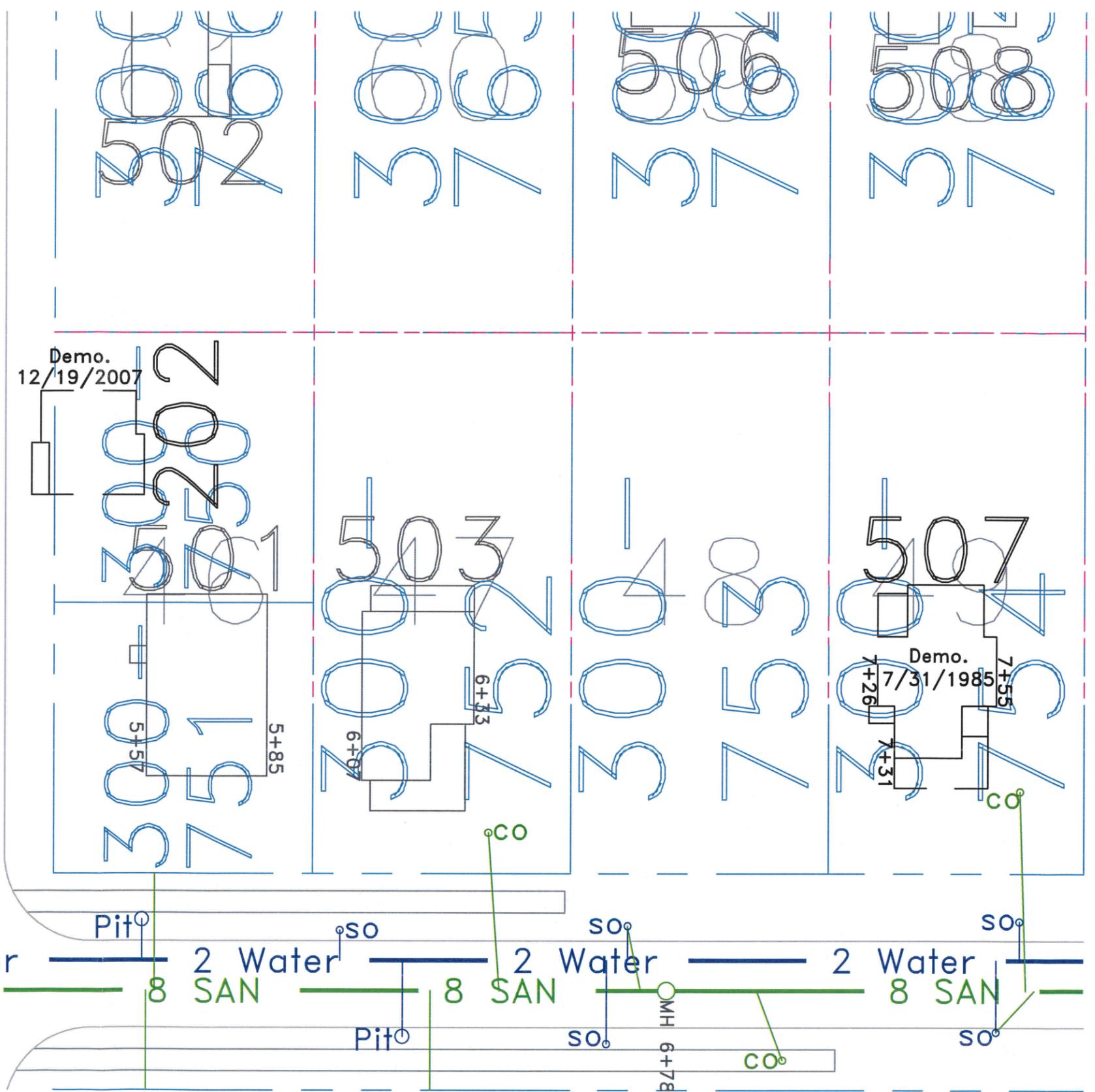
Sincerely

Richard Accoe

228-1082

A handwritten signature in black ink, appearing to read "R J Accoe". The signature is written in a cursive style with a large initial "R".

RECEIVED  
DEC 01 2015



***CITY OF DOWAGIAC***

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**MEMO TO: Mayor Lyons and City Council Members**

**FROM: Kevin P. Anderson, City Manager**

**DATE: January 21, 2016**

**SUBJECT: Blight Grant Application**

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The Michigan Land Bank is once again accepting applications for Blight Elimination Program demolition funding. This is the same agency from which the City received funds to assist in the demolition of Old Grey.

Once again there is a very short timeline for applications which are due February 8, 2016. Also, only \$1 million is being allocated statewide and there are incentives in the program for applications that include local matching funds and are smaller in scale.

There are a number of properties in the city that qualify for this program and it is recommended that we target total projects that add up to less than \$100,000 to increase the points that our application can receive.

You will see that the attached application is in draft form because we are still trying to firm up costs for demolition. This is necessary for a competitive grant application. Since this is the last regularly scheduled meeting before the grant application deadline Council can either authorize the City Manager to make application based on the items outlined in the draft application or call for a special meeting late next week to authorize the final application form.

If you have questions regarding this matter please feel free to contact me.

**RECOMMENDATION**

Approve a resolution authorizing the City Manager to apply for Blight Elimination Program demolition funding through the Michigan Land Bank.

Support Documents:

Cover Memo-City Mgr.

Resolution

Grant Application - DRAFT

**CITY OF DOWAGIAC  
RESOLUTION AUTHORIZING AN APPLICATION FOR A 2016 MICHIGAN  
BLIGHT ELIMINATION PROGRAM GRANT**

Councilmember \_\_\_\_\_ offered and moved the adoption of the following resolution; seconded by Councilmember \_\_\_\_\_.

**WHEREAS,** the City of Dowagiac desires to improve its employment, tax base and the overall quality of lives of its residents; and,

**WHEREAS,** the City of Dowagiac recognizes that blighted, abandoned buildings negatively impacts the tax base and quality of life for its residents; and,

**WHEREAS,** competitive grant funding is available through the 2016 Michigan Blight Elimination Program; and,

**WHEREAS,** the City of Dowagiac is committed to eliminating blight and needs additional resources to deal with five (5) blighted and vacant properties; and,

**WHEREAS,** the City of Dowagiac has determined that the removal of the structures located at 101 New York Avenue, 214 Commercial Street, 204 Commercial Street, 307 Commercial Street and 203 Chestnut Street are necessary and have committed financial resources to cover costs associated with the demolitions that are ineligible for the grant or are in excess of the grant; and,

**NOW, THEREFORE, BE IT RESOLVED** that the City of Dowagiac, by the affirmative vote of its City Council, does hereby designate Kevin P. Anderson, City Manager, to make a grant application on behalf of the City of Dowagiac to the 2016 Michigan Blight Elimination Program up to \$100,000.

**BE IT FURTHER RESOLVED** that City of Dowagiac does hereby commit to reserving capital improvement funds to pay costs associated with the demolition that are ineligible for the grant or are in excess of the grant.

**ADOPTED/REJECTED**

- DRAFT -

**CITY OF DOWAGIAC**

**MICHIGAN BLIGHT ELIMINATION**  
**PROGRAM**

**2016 APPLICATION**

## 2016 MICHIGAN BLIGHT ELIMINATION PROGRAM APPLICATION

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# SECTION 1

## PROJECT APPLICANT

City of Dowagiac  
241 South Front Street  
PO Box 430  
Dowagiac, Michigan 49047-0430  
(269)782-2195

Points of contact:

Kevin P. Anderson, City Manager  
Rozanne H. Scherr, Assistant City Manager  
City of Dowagiac  
(269)782-2195 (W)  
(269)462-2820 (C)  
[kanderson@dowagiac.org](mailto:kanderson@dowagiac.org)  
[rscherr@dowagiac.org](mailto:rscherr@dowagiac.org)

# SECTION 2

## PROJECT SUMMARY

The project consists of the demolition and removal of five (5) vacant, blighted, and obsolete buildings located in the City of Dowagiac. Four (4) of the buildings are located within our Central Business District and are on the main corridor into the City. All properties fit within the guidelines of the City's Master Plan for renovation of the appl. All properties are eligible under the guidelines described in the Program Statement and are owned by the City of Dowagiac.

*Describe corridor improvement and strategic plan*

The City of Dowagiac is requesting a Michigan Blight Elimination Program Grant in the total amount of \$ \_\_\_\_\_ for demolition and removal of the structures.

# SECTION 3

## DETAILED PROJECT DESCRIPTION

### Property List:

101 New York Avenue, Dowagiac, Michigan (vacant, single story, blighted and obsolete commercial structure built in the 1940's. This property shares a parcel with 214 Commercial Street below)

- Owner: City of Dowagiac
- Condition Assessment: Poor condition. Building has been out of use and no exterior maintenance in over 20 years. Sewer and water have been disconnected. Property was purchased by the City in 2015 as part of a planned "Corridor Improvement Plan."
- Environmental Review: Included Phase I & II with BEA submitted to State. Soil and groundwater contamination limited to the northern portion of property. Asbestos Survey completed and building contains no Asbestos Containing Materials.
- Historical Status: Does not apply.
- Map of Area: Included as Appendix A
- Land Reuse: This property is part of a planned greenspace/public space including public art, landscaping and benches. See Appendix B for a conceptual Beckwith Commons drawing.
- Conformance with Strategic Plan: This proposal is consistent with the Strategic Plan and the Corridor Improvement Plan. Under the Strategic Plan, as key properties in the downtown have become available through foreclosure, tax reversion or private sale, the City has purchased the properties, demolished them, and used the property for public purpose such as for green space or for economic development purposes. The Corridor Improvement Plan calls for the improvement of properties located along the state highway and through the central business district.

214 Commercial Street, Dowagiac, Michigan (obsolete, two-story, residential home built in 1900, converted to commercial use. This property shares a parcel with 101 New York Avenue above)

- Owner: City of Dowagiac
- Condition Assessment: Poor condition. Little or no maintenance on interior/exterior of building in over 20 years, dilapidated main entry may be unsafe for use. Property was purchased by the City in 2015 as part of a planned "Corridor Improvement Plan."
- Environmental Review: Included Phase I & II with BEA submitted to State. Soil and groundwater contamination limited to the northern portion of property. Asbestos survey completed and building contains both friable and non-friable ACM's. Asbestos remediation has not been started.
- Historical Status: Does not apply.
- Map: Included as Appendix A
- Land Reuse: This property is part of a planned greenspace/public space including public art, landscaping and benches. See Appendix B for a conceptual Beckwith Commons drawing.

- **Conformance with Strategic Plan:** This proposal is consistent with the Strategic Plan and the Corridor Improvement Plan. Under the Strategic Plan, as key properties in the downtown have become available through foreclosure, tax reversion or private sale, the City has purchased the properties, demolished them, and used the property for public purpose such as for green space or for economic development purposes. The Corridor Improvement Plan calls for the improvement of properties located along the state highway and through the central business district.

204 Commercial Street, Dowagiac, Michigan (vacant, single story, former commercial structure located within a development project area)

- **Owner:** City of Dowagiac
- **Condition Assessment:** Moderate. Property has been vacant for several years with no general maintenance performed during that time. Property was purchased by the City in 2015 as part of a planned “Corridor Improvement Plan.”
- **Environmental Review:** Included Phase I & Limited II. No impacted soil or groundwater observed. Asbestos Survey completed and building contains both friable and non-friable ACM’s. Asbestos remediation has not been started.
- **Historical Status:** Does not apply.
- **Map:** Included as Appendix A
- **Land Reuse:** This property is part of a planned greenspace/public space including public art, landscaping and benches. See Appendix B for a conceptual Beckwith Commons drawing.
- **Conformance with Strategic Plan:** This proposal is consistent with the Strategic Plan and the Corridor Improvement Plan. Under the Strategic Plan, as key properties in the downtown have become available through foreclosure, tax reversion or private sale, the City has purchased the properties, demolished them, and used the property for public purpose such as for green space or for economic development purposes. The Corridor Improvement Plan calls for the improvement of properties located along the state highway and through the central business district.

307 Commercial Street, Dowagiac, Michigan (vacant, two-story, blighted residential structure built in 1900)

- **Owner:** City of Dowagiac
- **Condition Assessment:** Poor condition. Numerous blight enforcement citations issued for weeds/grass. All utilities have been disconnected. Property was purchased by the City in 2015 as part of a planned “Corridor Improvement Plan.”
- **Environmental Review:** Environmental review was not conducted for soil or groundwater contamination as property is residential. Asbestos survey completed and building contains both friable and non-friable materials. Asbestos remediation has not been started.
- **Historical Status:** Does not apply.
- **Map:** Included as Appendix A
- **Land Reuse:** This property is part of a planned greenspace/public space. Post-demolition the property will be graded, reseeded and landscaped. See Appendix B for a conceptual Beckwith Commons drawing.

- **Conformance with Strategic Plan:** This proposal is consistent with the Strategic Plan and the Corridor Improvement Plan. Under the Strategic Plan, as key properties in the downtown have become available through foreclosure, tax reversion or private sale, the City has purchased the properties, demolished them, and used the property for public purpose such as for green space or for economic development purposes. The Corridor Improvement Plan calls for the improvement of properties located along the state highway and through the central business district.

203 Chestnut Street, Dowagiac, Michigan (vacant, single story, blighted structure unfit for use)

- **Owner:** City of Dowagiac
- **Condition Assessment:** Poor condition. Building is former Department of Public Works administration building which was moved to the new Dowagiac City Hall in 1998. Maintenance and utility costs are too high to justify re-use of building.
- **Environmental Review:** Environmental review is not required for this property. Asbestos survey completed and building contains both friable and non-friable materials. Asbestos remediation has not been started.
- **Historical Status:** Does not apply.
- **Map:** Included as Appendix A
- **Land Reuse:** Demolition of this building will allow for additional parking and equipment storage for the public works department.
- **Conformance with Strategic Plan:** The City of Dowagiac continues to look for ways to improve efficiencies. Long range plans include the consolidation of the Grounds Department to this site with the addition of a new building. The current site of the Grounds Department could be eliminated through sale or demolition.

## SECTION 4

### PROJECT BENEFITS

**Public Safety:** The properties located at 101 New York, 214 Commercial, 204 Commercial and 307 Commercial are located in the City’s Downtown Development District on a State highway feeding into Dowagiac from the west. Removal of these structures would allow for the City to revise traffic flow in this area, provide additional parking and eliminate an unsafe intersection leading to State Highway 51. Appendix B depicts a rendering of one proposed option for this area. This is also a heavily traveled pedestrian area leading to the Central Business District, Library, Beckwith Theatre and Post Office. Pedestrian traffic will benefit with additional access points to the downtown.

The structure located at 203 Chestnut Street will improve public safety efforts by allowing ample room for parking of equipment and allowing for the relocation of equipment stored at other sites to be consolidated at one location.

**Property Value Stabilization:** The New York and Commercial Street properties are a point of entry to our Central Business District and Downtown Development District. In their current blighted and vacant condition the buildings pose as an eyesore to our downtown and a scar on the Central Business District and neighborhoods. Removal of the buildings will serve to stabilize, and possibly raise, property values in the downtown and the adjacent neighborhoods.

The structure at 203 Chestnut Street will be the second building to be removed from this City property. In 2008, the City demolished the decommissioned electric generation facility located next to the DPW Admin building. The City continues to strive to set an example in the community by reusing, recycling or removing buildings after careful thought of future sustainability.

**Economic Development Opportunities:** Removal of the buildings will provide for a beautiful point of entry to the City's downtown and also will serve to high-lite a planned renovation of the Dowagiac District Library, located across the street from 204 Commercial, back to its' original Carnegie entry. The Beckwith Theatre is also a large draw to this area and removal of the buildings will provide additional parking areas. Lastly, with the removal of the buildings, the area is prime for the location of a restaurant, brew pub and boutique stores.

Also, returning this area to a greenspace, and removing the blighted buildings, would complement the many downtown redevelopment efforts that have been a priority of the City including multiple Rental Rehabilitation Grant successes that have provided housing above the Central Business District stores, revitalization of existing storefronts and the creation of additional buildings in the downtown.

**Additional Investment:** The City of Dowagiac has spent approximately \$223, 900 on this group of properties to date. Costs to the City include the purchase of the properties, boundary survey, environmental reviews, asbestos surveys, removal of utilities and waiver of permit fees. Details of these costs are included in Section 7.

## SECTION 5

**CAPACITY:** The City has extensive experience in managing grants and large project demolition.

The City has successfully managed both Federal and State grants including Federal Community Development Block (CDBG) Grants, United States Department of Agriculture (USDA) Grants and Congestion Mitigation Air Quality (CMAQ) Grants. State grants include Michigan Land Bank Fast Track Authority, Michigan State Housing Development Authority (MSHDA) Rental Rehabilitation Program, Department of Energy, Labor and Economic Growth Energy Efficiency grants, and miscellaneous other Department of Transportation grants.

In 2015, the City oversaw the demolition of a three-story, 300,000 sf, vacant, blighted building, with the project to be completed in April 2016. In 2014, the City oversaw the demolition of an obsolete medical facility and renovated the majority of the City block including the building a new professional building that houses the health department and a dental clinic. In 2006 – 2007, the City oversaw the demolition of “Central Middle School,” a large two-story obsolete school building, making room for a new medical clinic across the street from Lee Memorial Hospital. The City oversaw the streetscape project in the 1990’s which involved diverting a State highway out of the Front and Main Street of the downtown and demolition of the “twin building” of 200 East Division Street.

# SECTION 6

## **CONTRACTOR QUALIFICATIONS:**

### Bid Process Description:

The City's bid process requires that supplies, equipment or services over \$15,000 be authorized by the City Council and secured by competitive bid and written contract. Advertisement notices for sealed, competitive bids shall be published once in a newspaper of general circulation in the City. Additional effort is placed on Disadvantaged Business Enterprises when applicable. The notice shall state the general description of the request including project description, where specifications can be obtained, and the time and place for the opening of bids. City Council may require the successful bidder post a bid bond or bid deposit in the amount it deems proper for large monetary contracts. Bids are opened publicly by the City Clerk at the time and place stated in the public notice. After examination and tabulation by the City Clerk, all bids may be inspected by competing bidders. The Formal Competitive Bid Process is outlined in the City of Dowagiac's Code of Ordinances included as Appendix B.

### Selection Policy and Criteria:

The Selection Policy is described in the City of Dowagiac Code of Ordinances. The city council may reject any or all bids, or the bid for one (1) or more commodities included in the proposed contract, when the public interest will be served thereby. The city council may authorize the purchase of the commodities in the open market, provided the price paid in the open market shall not exceed any bid price submitted for the same commodity. Otherwise the contract shall be awarded by the city council on the basis of the bid most advantageous to the city. The city council shall take into consideration quality offered with the bid, delivery terms, and the service reputation of the vendor in making their award of the contract.

The Criteria for selection shall be the lowest acceptable bid that provides for demolition and removal of the building in the safest, most environmentally compliant manner with a focus on reuse or upcycling of materials. Background and references on successful bidder will be performed prior to award of bid.

**BUDGET TABLE****CITY INVESTMENT:**

	Purchase Cost	Boundary Survey	Env Review	Asbestos Survey	Utility Removal	Waived Permit Fees	Total Cost
101 New York Avenue	*	*	*	*		\$50	\$50
214 Commercial Street	\$75,402	\$1,800	\$6,950	\$2,500		\$50	\$86,702
204 Commercial Street	\$105,555	NA	\$3,990	\$2,090		\$50	\$111,685
307 Commercial Street	\$20,268	NA	NA	\$2,000	\$626	\$38	\$22,932
203 Chestnut Street	NA	NA	NA	\$2,300	\$148	\$50	\$2,498

**GRAND TOTAL**\$223,867

\* Costs included with 214 Commercial Street.

**ASBESTOS, DEMOLITION AND REMOVAL BUDGET:**

	Asbestos Abate	Utility Removal	Demo Cost	Site Grading	Total Cost
101 New York Avenue	\$0	\$642	\$2,500	\$300	\$3,442
214 Commercial Street	NEED	\$642	\$9,000	\$300	\$9,942
204 Commercial Street	NEED	\$642	\$6,250	\$600	\$7,492
307 Commercial Street	NEED	NA	\$6,700	NA	\$6,700
203 Chestnut Street	NEED	NA	\$7,400	NA	\$7,400

**GRAND TOTAL**\$34,976

# SECTION 7

## INSERT BUDGET TABLE

# SECTION 8

### PROJECTED TIMEFRAMES:

The project is set to begin upon award of grant.

	Start Date
Bid Letting	1 week after award of grant
Asbestos Removal (if applicable)	March - April 2016
Site Preparation (utility removal, etc.)	March - April 2016
Demolition Preparation	April - May 2016
Demolition and Removal	June – July – August 2016
Sodding, Landscaping	August – September 2016

# SECTION 9

### EVIDENCE OF LOCAL SUPPORT:

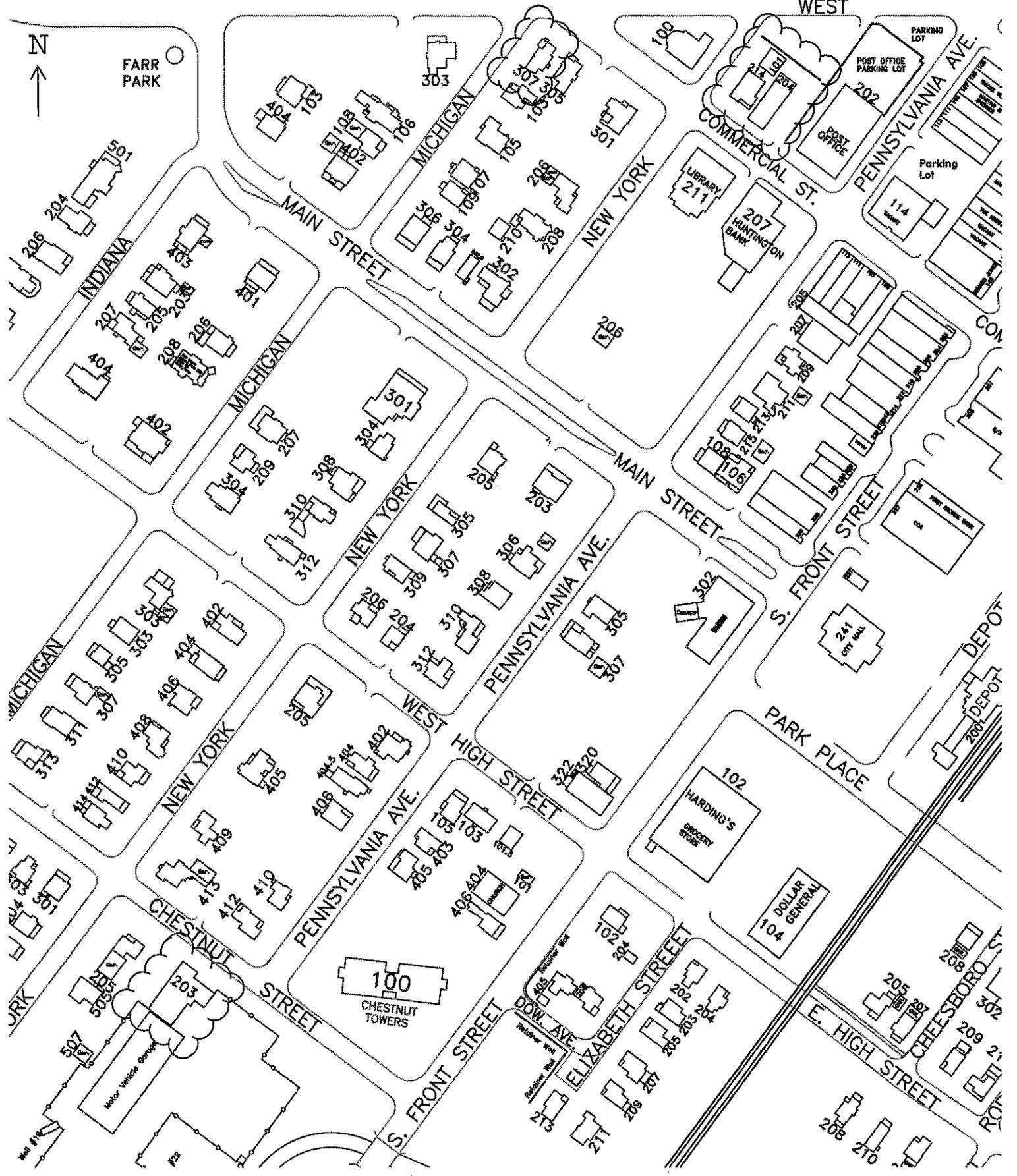
- Resolution of Authorization from the Dowagiac City Council
- Letter of Support from Dowagiac Chamber of Commerce
- Letter of Support from the Dowagiac Downtown Development Authority
- Letter of Support from Dr. Tim Dowsett, Dowsett Chiropractic
- Letter of Support from Jack Gannon, President, Beckwith Theatre Company

# APPENDIX A

## MAPS



FARR PARK



# **APPENDIX B**

## **BECKWITH COMMONS CONCEPTUAL DRAWING**

# **APPENDIX C**

## **CODE OF ORDINANCES PURCHASING/CONTRACTING**

## **DIVISION 3. PURCHASING, CONTRACTING AND SELLING PROCEDURES**

### **Sec. 2-236. Definitions**

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

*Bid bond* means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event of specific award bidder fails to sign the contract as bid.

*Bid deposit* means a sum of money or certified check, deposited with and at the request of the city to guarantee that the bidder shall, if selected, sign the contract as bid. If the bidder does not sign the contract, the full deposit is forfeited.

*Blanket order* means an annual purchasing agreement established with a supplier to allow small purchases by the city for up to a year without going through the purchasing procedure each time a purchase is made. Individual purchases under a blanket order cannot exceed \$250.00.

*Change order* means a purchaser's 'written modification or addition to a purchase order.

*Formal bid limit* means the minimum expenditure of \$15,000.00 at which a formal competitive bid is required unless excluded by section 2-240.

*Formal competitive bid* means the offer of firm bids by individuals or firms competing for a contract, privilege or right to supply specified services or merchandise or purchase city personal property. Bids are submitted in sealed envelopes to prevent dissemination of the contents before the deadline for the submission of all bids and to ensure fair competition among bidders. Bids are required, unless excluded by section 2-240, on major procurements expected to cost at least \$15,000.00 and on the sale of city personal property of a value estimated in excess of \$1,000.00.

*Purchase order* means a purchaser's written document to a supplier formally stating all terms and conditions of a proposed transaction. It is required for all purchases over \$1,000.00. (Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-237 Required authorization**

In accordance with the city Charter, the city manager shall be given the authority to act as the purchasing agent of the city, unless he/she shall designate another officer or city employee to act as purchasing agent. All purchase orders issued on behalf of the city

shall be approved by the purchasing agent and the department head of the requesting department, or his/her designee, before being issued. The purchasing agent shall adopt a policy establishing a procurement system. (Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-238 Formal competitive bid process.**

(a) All supplies, equipment or contractual services amounting in value equal to or more than the formal bid limit of \$15,000.00 shall be secured by competitive bids and written contract. Advertisement notices for sealed, competitive bids shall be published once in a newspaper that is in general circulation in the city. Such notices shall state the general description of the article or service to be purchased, where specifications can be obtained, and the time and place for the opening of bids. The purchasing agency or department may, in addition, solicit sealed bids from prospective suppliers by sending them copies of the bid forms and specifications to acquaint them with the proposed purchase.

(b) All bids shall be submitted to the city clerk. In cases of construction contracts, or purchases involving large sums of money, the city council may require that the successful bidder post a bid bond or bid deposit in the amount that it deems proper. The bids shall be opened publicly by the city clerk or designee at the time and place stated in the public notice. After examination and tabulation by the city clerk, all bids may be inspected by the competing bidders. The city council may reject any or all bids, or the bid for one (1) or more commodities included in the proposed contract, when the public interest will be served thereby. The city council may authorize the purchase of the commodities in the open market, provided the price paid in the open market shall not exceed any bid price submitted for the same commodity. Otherwise the contract shall be awarded by the city council on the basis of the bid most advantageous to the city. The city council shall take into consideration quality offered with the bid, delivery terms, and the service reputation of the vendor in making their award of the contract.

(c) Except as exempted in section 2-240. (Ord. No. 02-2, ~ 1, 2-6-02)

### **Sec. 2-239 Informal competitive quote process**

(a) All purchases of supplies, equipment or contractual services which are estimated to be less in cost than the formal bid limit of \$15,000.00 may be made in the open market, without newspaper advertisement and without the necessity of observing the procedure prescribed in section 2-238 for the award of the contracts. The purchasing agent shall keep a record of all open market orders and such records shall also be open to public inspection.

(b) Open market purchases of \$5,000.00 to \$14,999.00 shall, whenever possible, be based on at least three written quotes and shall be awarded on the basis of the quote most advantageous to the city.

(c) Open market purchases of \$1,000.00 to \$4,999.00 shall, whenever possible, be based on at least two written, verbal or faxed quotes and shall be awarded on the basis of the quote most advantageous to the city.

(d) Open market purchases of less than \$1,000.00 may be made from any available source, as opposed to buying from a vendor who has responded to an invitation to bid or provide a quote. Competitive bidding shall not be required for purchases under this subsection when it has been determined by the department director that it is not cost effective.

(e) Except as exempted in section 2-240. (Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-240 Expenditures of \$15,000.00 or more**

When an expenditure, other than the compensation of persons employed by the city, exceeds \$15,000.00, such expenditure shall first be authorized and directed by the city council. No purchase involving in excess of such sum shall be made or awarded without the securing of formal competitive bids as prescribed in section 2-238. Exceptions to this requirement may occur under the following circumstances:

(1) When the subject of the contract is other than a public work or improvement and the product or material contracted for is not competitive in nature, no advantage to the city would result from requiring competitive bidding, and the city council authorizes execution of a contract without competitive bidding;

(2) In the employment of professional services including but not limited to medical, accounting, auditing, data processing, legal, planning, engineering, and architectural and the city council authorizes execution of a contract without competitive bidding;

(3) Where the scope of the work is not definitive and as a result a request for proposal is difficult to prepare and/or the cost of preparing such request for proposal is expected to exceed the cost of the contract and the city council authorizes execution of a contract without competitive bidding;

(4) Emergency purchases as authorized by section 2-242;

(5) When the city council determines a public interest will best be served by purchase from or joint purchase with another unit of government as provided in section 2.1 of the city Charter;

(6) When the city elects to perform the work using city employees;

(7) All kinds and types of insurance; and

(8) Any contract, agreement or arrangement, or renewal thereof, for the purchase of electricity at wholesale from a governmental unit or agency of a governmental unit, an authority, a private or public cooperative or association, a public utility or other entity.

### **Sec. 2-241 Additional purchases or change orders after competitive bidding**

The purchasing agent may make additional purchases of supplies, materials, equipment or services from a successful bidder provided that:

(1) The amount of additional purchase or change order is at the same cost or less per unit price as originally bid by the vendor;

(2) The amount of additional purchase or change order does not exceed the cost of the original purchase;

(3) The purchase or change order occurs not more than 12 months after the date of the original purchase;

(4) The purchasing agent is reasonably certain that the same supply, material, equipment or service is not available at a lesser cost from any source;

(5) The purchase or change order is considered an emergency purchase as provided in section 2-242; and

(6) Any purchase or change order in excess of \$15,000.00 approved by the purchasing agent must be contained in a full report filed by the city manager to the city council and included in the council minutes.

(Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-242 Emergency purchases**

In the case of an emergency or an apparent emergency endangering the public peace, health or safety of the city and its residents, the city manager or his/her designee may purchase directly any supplies, materials, equipment or services which he/she deems immediately necessary. Such actions will be allowed even if the resulting emergency purchases exceed \$15,000.00 without competitive bidding. The nature of the emergency shall be contained in a full report filed by the city manager to the city council and shall be confirmed by the city council at its next meeting following such purchase.

(Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-243 Blanket order purchases**

Periodic purchases from a single vendor as set forth in a single purchase order, reissued at least annually, for reasons of time savings, availability and competitive

pricing may be made using a blanket order. The competitive pricing of such goods or services shall be reviewed no less frequently than every 12 months.  
(Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-244 Disqualification**

No bid shall be accepted from or contract awarded to a bidder who is in arrears to the city, who is in default on any contract with or payment due to the city or who has previously demonstrated bad faith in dealings with the city.  
(Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-245 Purchases through state bid contracts**

Whenever the city purchases items from a state bid contract, the provisions of sections 2-238 through 2-240 shall be deemed to have been complied with.  
(Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-246 Sale of personal property**

Personal property of a value in excess of \$1,000.00 shall be sold only after advertisement for competitive bids or, in the alternative, after intention to make a specific sale has been resolved at a prior council meeting and entered into the minutes thereof.  
(Ord. No. 02-2, § 1, 2-6-02)

### **Sec. 2-247 Emergency contracts**

Where it is necessary to let a contract prior to the next regular meeting of the city council in order to prevent the possibility of damage to life or property or a vital interest of the city, the city manager may obtain bids on a proposed contract or purchase from available, willing and able bidders and shall then obtain the verbal and/or written concurrence of a majority of the city council, following which he/she may then let the contract or make the purchase. The action of the city manager shall be ratified by the council at its next regular meeting; provided, however, that there is no evidence of collusion, fraud or malfeasance on the part of the city or the contractor.  
(Ord. No. 02-2, § 1, 2-6-02)

### **Secs. 2-248-2-260 Reserved**

***CITY OF DOWAGIAC***

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**MEMO TO: Mayor Lyons and City Council Members**

**FROM: Kevin P. Anderson, City Manager**

**DATE: January 22, 2016**

**SUBJECT: Dial-A-Ride Budget Approval**

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A resolution is on Monday's agenda to express the City's intention to apply for funding and to approve a projected 2017 Dial-A-Ride budget in accordance with the master contract with the Michigan Department of Transportation (MDOT). While we operate under a master contract for these funds with the State, we still need to apply for funding on an annual basis and include budget projections.

The DART Local Advisory Committee has recommended the proposed budget for approval. As projected, the State share of the budget is projected at \$74,734 (35.76%) and Federal share at \$38,663 (18.5%) on a total budget of \$208,989. Last year's DART budget percentages were State 36.34% and Federal 16.0% on a \$205,480 budget.

**RECOMMENDATION**

I recommend that Council approve the resolution for the City's intention to apply for funding and to approve a projected 2017 Dial-A-Ride budget.

Support Documents:  
Cover Memo-City Mgr.  
Resolution  
Dept. Head Reports

### FY 2017 RESOLUTION OF INTENT

The approved resolution of intent to apply for state formula operating assistance for  
fiscal year 2017 under Act 51 of the Public Acts of 1951, as amended.

**INSTRUCTIONS:** Complete and save the form in PTMS, and attach a signed copy in PTMS

**WHEREAS**, pursuant to Act 51 of the Public Acts of 1951, as amended (Act 51), it is necessary for the  
Dowagiac, City of \_\_\_\_\_, (hereby known as THE APPLICANT) established under  
*Name of Applicant (legal organization name)*

Act 51 \_\_\_\_\_ to provide a local transportation program for the state fiscal year of 2017 and, therefore, apply  
for state financial assistance under provisions of Act 51; and

**WHEREAS**, it is necessary for the governing body, to name an official representative for all public  
transportation matters, who is authorized to provide such information as deemed necessary by the State  
Transportation Commission or department for its administration of Act 51; and

**WHEREAS**, it is necessary to certify that no changes in eligibility documentation have occurred during the  
past state fiscal year; and

**WHEREAS**, the performance indicators have been reviewed and approved by the governing body.

**WHEREAS**, THE APPLICATION, has reviewed and approved the proposed balance (surplus) budget,  
and funding sources of estimated federal funds \$ 38,663, estimated state funds \$ 75,952,  
estimated local funds \$ 14,524, estimated fare box \$ 30,000, estimated other funds  
\$ 49,850, with total estimated expenses of \$ 208,989

**NOW THEREFORE**, be it resolved that THE APPLICANT hereby makes its intentions known to provide  
public transportation services and to apply for state financial assistance with this annual plan, in accordance with  
Act 51; and

**HEREBY**, appoints Rozanne H. Scherr as the Transportation Coordinator,  
for all public transportation matters, who is authorized to provide such information as deemed necessary by the  
State Transportation Commission or department for its administration of Act 51 for 2017.

I, Jane P. Wilson \_\_\_\_\_, City Clerk \_\_\_\_\_, of  
(Name) (Secretary/Clerk)

**THE APPLICANT**, having custody of the records and proceedings of THE APPLICANT, does hereby certify that I  
have compared this resolution adopted by THE APPLICANT at the meeting of January 25, 2016, with  
the original minutes now on file and of record in the office and that this resolution is true and correct.

**IN TESTIMONY WHEREOF**, I have hereunto set my  
hand and affixed seal of said \_\_\_\_\_, this \_\_\_\_\_  
day of \_\_\_\_\_ A.D. 20\_\_\_\_

SIGNATURE

# CITY OF DOWAGIAC

## Interdepartmental Memo

**TO:** Kevin Anderson, City Manager      **FROM:** Rozanne Scherr, Transit Coordinator  
**RE:** 2017 Proposed DART Budget      **DATE:** January 14, 2016

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The DART Local Advisory Committee met on January 7, 2016 to review and approve the proposed 2017 DART budget in the amount of \$208,989. It is their recommendation that the budget be brought before City Council for formal approval. The operating percentages used for this budget are as follows:

State share: 35.76% or \$74,734  
Federal share: 18.50% or \$38,663

The Local Operating Assistance item is the budget shortfall amount of \$15,742 which may need to be drawn from reserves or transferred out of General Fund to subsidize the DART operation. Operational deficits must be addressed through fare increases and/or a millage increase.

I have attached the proposed 2017 Budget, the Resolution of Intent and the signed DART Local Advisory Committee minutes for your review. Should you have any questions or comments please do not hesitate to contact me.

**Dowagiac Dial-A-Ride**

**P.O. Box 430  
Dowagiac, MI 49047**

**(269) 782-2195**

**Nonurban City**

**Regular Service**

**Annual Budgeted**

**2017**

**Operating Revenue: \$30,000**

**Total Eligible Expenses: \$208,989**

**Local Share: \$94,374**

**Comments: -**

**Dowagiac Dial-A-Ride**  
**Nonurban City**  
**Regular Service**  
**Annual Budgeted**  
**2017**

**Revenue Schedule Report**

Code	Description	Amount
<b>401 :</b>	<b>Farebox Revenue</b>	
40100	Passenger Fares (-)	\$30,000
<b>406 :</b>	<b>Auxiliary Trans Revenues</b>	
40699	Other Auxiliary Trans Revenues (Explain in comment field) (-extra bag fees and no-show fees)	\$350
<b>408 :</b>	<b>Local Revenue</b>	
40800	Taxes Levied Directly for/by Transit Agency (-)	\$47,000
<b>409 :</b>	<b>Local Revenue</b>	
40910	Local Operating Assistance (-)	\$14,524
<b>411 :</b>	<b>State Formula and Contracts</b>	
41101	State Operating Assistance (-)	\$75,952
<b>413 :</b>	<b>Federal Contracts</b>	
41301	Section 5311 Operating (-)	\$38,663
<b>414 :</b>	<b>Other Revenue</b>	
41400	Interest Income (-)	\$2,500
<b>Total Revenues: \$208,989</b>		

**Dowagiac Dial-A-Ride**  
**Nonurban City**  
**Regular Service**  
**Annual Budgeted**  
**2017**

**Expense Schedule Report**

Code	Description	Amount
<b>501 :</b>	<b>Labor</b>	
50102	Other Salaries & Wages (-)	\$8,005
<b>502 :</b>	<b>Fringe Benefits</b>	
50200	Fringe Benefits (-)	\$1,550
50220	DB Pensions (-)	\$6,400
50230	Other Post-Employment Benefits (-)	\$75
<b>503 :</b>	<b>Services</b>	
50302	Advertising Fees (-)	\$100
50305	Audit Costs (-)	\$300
50399	Other Services (Explain in comment field) (-)	\$700
<b>504 :</b>	<b>Materials and Supplies</b>	
50401	Fuel & Lubricants (-)	\$16,000
<b>505 :</b>	<b>Utilities</b>	
50500	Utilities (-)	\$575
<b>506 :</b>	<b>Insurance</b>	
50603	Liability Insurance (-)	\$400
<b>508 :</b>	<b>Purchased Trans Service</b>	
50800	Purchased Trans Service (-)	\$174,284
<b>509 :</b>	<b>Misc Expenses</b>	
50999	Other Misc Expenses (Explain in comment field) (-operating & office supplies, radio maintenance)	\$600

**Total Expenses: \$208,989**

**Dowagiac Dial-A-Ride  
Nonurban City  
Regular Service  
Annual Budgeted  
2017**

**Total Ineligible Expenses: \$0**

**Total Eligible Expenses: \$208,989**

**Dowagiac Dial-A-Ride  
Nonurban City  
Regular Service  
Annual Budgeted  
2017**

**Non Financial Schedule Report**

**Public Service**

Code	Description	Weekday DR	Saturday DR	Sunday DR	Total
610	Vehicle Hours	4,500	0	0	4,500
615	Unlinked Passenger Trips - Regular	11,220	0	0	11,220
616	Unlinked Passenger Trips - Elderly	7,140	0	0	7,140
617	Unlinked Passenger Trips - Persons w/Disabilities	5,865	0	0	5,865
618	Unlinked Passenger Trips - Elderly Persons w/Disabilities	1,275	0	0	1,275
622	Total Demand-Response Unlinked Passenger Trips	25,500	0	0	25,500
625	Days Operated	248	0	0	248

**Total Passengers: 25,500**

**Vehicle Information**

Code	Description	Quantity
655	Total Demand-Response Vehicles	3
656	Demand-Response Vehicle w/ Lifts	3
658	Total Transit Vehicles	3

**Total Vehicles: 3**

**Miscellaneous Information**

Code	Description	Quantity DR
660	Diesel/Gasoline Gallons Consumed	7,000
661	Total Transit Agency Employees (Full-Time Equivalents)	1

January 7, 2016

Dial-A-Ride local advisory committee meeting was held in the Dowagiac City Hall meeting room.

Members present: Joan Lyons, Randy Gross, Jean Cline, and EJ Jerz.

Members absent: Lucille Holloway-Chairperson, Linda Lorenz, Don Hallowell

Guests: Rozanne Scherr, Transit Coordinator (Dowagiac Dial A Ride), Becky Grabemeyer, Finance Director (City of Dowagiac), Dennis Schuh (Cass County Transportation Authority), Julie Hartman and Phyllis Ifill from Transportation Management Inc.

Rose called the meeting to order at 10:00 AM.

The minutes of the January 9, 2015 had been read by everyone. EJ Jerz made the motion to approve and Randy Gross seconded. Motion passed.

**OLD BUSINESS:**

Awaiting the arrival of two (2) new lift equipped buses.

**NEW BUSINESS:**

Finance Director Grabemeyer reviewed the defined benefit pension Unfunded Accrued Liabilities as per the new GASB rules. Defined pension needs to show a transfer of \$170,000.00 in to DART.

The 2015 budget results were reviewed and discussed.

Transit facts: 2015 Ridership was down (believe because last year was so cold), mileage increased due to the buses driving to Cass and back daily.

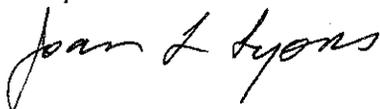
The Handicapped Accessibility Plan was reviewed by members of the LAC. EJ Jerz suggested we need more information about both Dial-A-Ride and Cass County Public Transit. People still don't know the pricing for in town and out of town. Suggested we make signs and post them in various areas of the community.

The proposed 2017 budget was reviewed. Local Operating assistance requires \$14,524.00 to balance revenues and expenses. We need to raise fares or we can increase the millage that is on the books. We will need to do one and/or the other to ensure the future operation of DART. Joan Lyons motioned to approve a recommendation that the proposed 2017 budget be presented to council for their formal approval, seconded by Randy Gross. Motion passed.

Jean Cline made the motion to adjourn and Randy Gross seconded. Motion passed.

Submitted by

Joan Lyons

A handwritten signature in cursive script that reads "Joan Lyons".

## **CITY OF DOWAGIAC**

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**MEMO TO: Mayor Lyons and City Council Members**

**FROM: Kevin P. Anderson, City Manager**

**DATE: January 21, 2016**

**SUBJECT: Resolution requesting Michigan Legislature**

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At the last City Council meeting some discussion took place concerning the impact of Senate Bill 571 on local elections. Since then the Michigan Municipal League (MML) has been working to garner support in the legislature to repeal provisions from the law that impedes the ability of elected and appointed officials from sharing factual information within 60 days of an election. Attached is a sample resolution for consideration.

The following background information was prepared by the MML:

### ***History***

*SB 571 was initially a non-controversial 12-page bill that had bipartisan support. But on late Wednesday night (Dec. 17, 2015) the House brought the bill up for consideration and a substitute version was adopted that increased the 12-page bill to 53 pages in length. This included inserting new language into Section 57 of the existing act that deals with permissible and prohibited activities by public bodies on election-related issues. This language was inserted without any notice to the League or other local government organizations and moved without any public testimony, let alone public awareness of what was in the new version of the bill. The bill was passed around 10:30 pm Dec. 17 largely along party lines and sent to Governor Snyder for his signature.*

*The new language in Section 57 states:*

***(3) EXCEPT FOR AN ELECTION OFFICIAL IN THE PERFORMANCE OF HIS OR HER DUTIES UNDER THE MICHIGAN ELECTION LAW, 1954 PA 116, MCL 168.1 TO 168.992, A PUBLIC BODY, OR A PERSON ACTING FOR A PUBLIC BODY, SHALL NOT, DURING THE PERIOD 60 DAYS BEFORE AN ELECTION IN WHICH A LOCAL BALLOT QUESTION APPEARS ON A BALLOT, USE PUBLIC FUNDS OR RESOURCES FOR A COMMUNICATION BY MEANS OF RADIO, TELEVISION, MASS MAILING, OR PRERECORDED TELEPHONE MESSAGE IF THAT COMMUNICATION REFERENCES A LOCAL BALLOT QUESTION AND IS***

*TARGETED TO THE RELEVANT ELECTORATE WHERE THE LOCAL BALLOT QUESTION APPEARS ON THE BALLOT.*

*In the days and weeks following approval of SB 571, many legislators—both Republicans and Democrats—said they did not fully read or know what was in the amended language. Some Republicans, after reading the bill and learning of its full negative implications and many unanswered questions, even said they encouraged the governor to veto the bill. Despite the many concerns raised about the bill, Governor Snyder signed it into law Wednesday, Jan. 6, 2016. The governor, in a somewhat unusual move, [sent out a letter](#) explaining why he signed the legislation despite the many unknowns and questions about the bill.*

*In his letter, the governor also called on the Legislature to enact new legislation to address the many concerns raised by the Michigan Municipal League and other organizations. Here is an excerpt from that letter:*

*However, recognizing that many local governmental entities and schools have raised concerns regarding confusion with the new language in section 57, I am calling on the Legislature to enact new legislation to address those concerns, and clarify that the new language does not impact the expression of personal views by a public official, the use of resources or facilities in the ordinary course of business, and that it is intended only to prohibit the use of targeted, advertisement style mass communications that are reasonably interpreted as an attempt to influence the electorate using taxpayer dollars. Local governmental entities and schools should still be allowed to distribute basic information about an election including the proposed or final ballot language and the date of the election. This is keeping within the spirit of the existing restrictions in the Act. The Senate Majority Leader and the Speaker of the House have agreed to work together on follow-up legislation clarifying the provision in section 57 of the Act in time for the March 2016 election.*

*New legislation to “fix” PA 269/SB 571 could be dropped in the Legislature as early as next week (week of Jan 11, 2016).*

*The League and several other organizations, including the Michigan Association of Counties, Michigan Townships Association, Michigan Association of School Boards, Michigan Association of School Administrators, believe there are significant constitutional and legal questions regarding PA 269, including a potential ban on freedom of speech. Repealing the provision is the only way to guarantee officials will be able to continue to give voters the facts. Ironically, Section 57, prior to the new language in SB 571, already provided the controls lawmakers were seeking.*

***Specific concerns with the new language:***

- *The previous language in Section 57 (prior to the amendments) appropriately provided an allowance of elected and appointed officials to express their views without fear of violating the act. This new subsection does not appear to account for that allowance and could be read as a ban on freedom of speech.*
- *The prohibition on any communication by television that references a local ballot question would seem to put every public access broadcast of a city council meeting at risk for violating this new provision. There is also no allowance for a public broadcast of a debate or voter forum, even if that forum is hosted by a third party.*
- *Community newsletters, and potentially even election-day reminders, that are mailed to residents could be banned under this language.*
- *Because this language specifically bans communication on only local ballot questions, the provision creates inconsistent treatment between communicating with residents on statewide ballot questions versus local questions.*
- *Any violation of this section puts a community at risk for a state fine of up to \$20,000 and for an individual a fine of up to \$1,000 and/or a year in jail.*
- *Because the law took immediate effect, it places an immediate gag order on local government entities with issues on the March 8, 2016 ballot and all subsequent elections. This impacts more than 100 cities, villages, townships, school districts, counties, and other entities that have ballot questions before the voters in the March 8 election.*

*In summary, this language puts an undue burden on communities and their residents, blocking access to unbiased, objective communication on the local issues that matter most to the residents in every community in Michigan. Please contact your lawmakers and tell them to repeal the new language in Section 57 of PA 269.*

**RECOMMENDATION**

Approve a resolution calling for a repeal language in Section 57 of PA 269.

Support Documents:

Cover Memo-City Mgr.  
Resolution

Councilmember \_\_\_\_\_ offered and moved the adoption of the following resolution; seconded by Councilmember \_\_\_\_\_.

WHEREAS, Governor Snyder signed into law, with immediate, effect Public Act 269 (Senate Bill 571) despite wide spread calls for a veto of this bill, including from members of his own party; and

WHEREAS, both the Michigan Senate and the Michigan House of Representatives passed Senate Bill 571 late into the night of December 16, 2015, just prior to recessing for the year; and

WHEREAS, one of the last minute amendments made to Senate Bill 571, without the knowledge of the Michigan Municipal League or other local government organization, and approved without any public testimony or awareness, was the new language inserted into Section 57, subsection (3); and

WHEREAS, this new law prohibits a public body, or a person acting for a public body, from using public funds or resources for the purpose of communicating any information to the electorate regarding a local ballot question that is to appear on the ballot, within 60 days of an election, and

WHEREAS, this law places an immediate gag order on entities with ballot questions on the March 8 ballot and every election thereafter; and

WHEREAS, municipal elected and appointed officials have a civic and legal duty to the residents of their communities to fully inform them regarding the issues placed before them, upon which they may exercise their constitutional right to vote; and

WHEREAS, existing laws, including the former language in Section 57, and decades of guidance from the Michigan Secretary of State, already prohibit the use of public funds to advocate for or against ballot issues; and

WHEREAS, existing laws already provided for an allowance for elected and appointed officials to express their views without fear of violating the act; and

WHEREAS, because the new law bans only communication on local ballot issues, it creates inconsistent treatment of statewide ballot questions versus local initiatives; and

WHEREAS, there are substantial questions regarding the constitutionality and legality of the new law, including a possible ban on freedom of speech;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Dowagiac calls for an immediate repeal of the new language in Section 57, subsection (3) of PA 269 of 2016; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that a copy of this Resolution be forwarded to the city's state representatives in the Michigan House of Representatives and the Michigan Senate.

Yeas:

Nays:

Absent:

ADOPTED / REJECTED

Jane Wilson  
City Clerk

**CITY OF DOWAGIAC**

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**MEMO TO: Mayor Lyons and City Council Members**

**FROM: Kevin P. Anderson, City Manager**

**DATE: January 22, 2016**

**SUBJECT: Lease with Van Buren/Cass District Health Department**

---

A resolution is on Monday's agenda to approve a lease and build out of 2,409 square feet of space on the ground floor of the James E. Snow Professional Building to the Van Buren/Cass District Health Department. With this lease the city will fill the entire ground floor of the building.

Basic terms are as follows:

- The lease rate will be the same as the law firm's leases which is \$14.25/sq ft.
- The length of the lease will be 18.5 years so that the end date of the lease coincides with their 2<sup>nd</sup> floor lease.
- The lease will generate \$34,328/year and just over \$635,000 for the term of the lease.
- Like the other leases, the city will be responsible for the build out which is anticipated to be \$144,000 which will be recouped over the term of the lease.

This combined leases for the Dr.'s office (\$210,000 over the next 6 years) and the attorney's office (\$65,336 over the next 5 years) and Health Department are slated to generate over \$910,000 in revenue. Renewal of the shorter leases will continue to generate revenues for years to come.

**RECOMMENDATION**

Authorize the resolution to approve a lease and construction buildout with the Van Buren/Cass District Health Department.

Support Documents:

Cover Memo-City Mgr.  
Resolution  
Property Lease

Councilmember \_\_\_\_\_ offered and moved the adoption of the following resolution;  
seconded by Councilmember \_\_\_\_\_.

WHEREAS, the City of Dowagiac owns the professional office building known as the  
Jame E. Snow Professional Building located at the corner of Front and  
Main Street in Downtown Dowagiac, and;

WHEREAS, the Van Buren/Cass District Health Department needs office space to  
expand their services to the greater Dowagiac area, and:

WHEREAS, terms have been negotiated for 2,409 square feet of space in the first floor  
of the James E. Snow Professional Building,

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, by the affirmative  
vote of its City Council, does hereby approve the terms of a building lease  
with Van Buren/Cass District Health Department subject to final review  
and approval by the City Manager, and;

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed  
to complete lease negotiations and act as signatory for the execution of a  
lease once the document review is complete.

BE IT RESOLVED that the City of Dowagiac, hereby approves and authorizes a budget  
of \$144,000 for construction of the office suite for Van Buren/Cass  
District Health Department, and;

BE IT FUTHER RESOLVED that the City Manager be authorized and directed to act as  
signator for Purchase Orders with necessary subcontractors so that the  
office suite described in the executed lease with Van Buren/Cass District  
Health Department can be constructed and occupied as quickly as  
possible.

ADOPTED/REJECTED

## PROPERTY LEASE

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**CITY OF DOWAGIAC**, a Michigan municipal corporation, whose address is 241 S. Front Street, Dowagiac, Michigan 49047 (the "**Lessor**"), and **VAN BUREN/CASS DISTRICT HEALTH DEPARTMENT**, a partnership, whose address is 57418 CR 681, Hartford, Michigan 49057 (the "**Tenant**"), enter into this Lease subject to the following conditions:

**1. Premises.** The Lessor leases to the Tenant that certain space in the building ("Building") located upon the real property ("Property") located at 302 South Front Street, Dowagiac, Michigan 49047, more specifically described on the attached Exhibit A, and consisting of Two Thousand four hundred nine (2,409) square feet (the "Premises").

**2. Term.** The term of the Lease shall be for commencing on the date of the issuance of a certificate of occupancy for the Premises (the "**Commencement Date**") and ending at on midnight of on September 19, 2034, unless extended by exercise of Tenant's Option to Extend the Term. Tenant may terminate the Lease earlier than the term by providing Lessor at least three (3) months' notice and by paying rent to Lessor for the period of time through the date of termination and for an additional twelve (12) months thereafter.

**2.3. Option to Extend.** If: (a) Tenant is in compliance with the Rent payment provision below then Landlord will grant to Tenant two (2) options to extend of five (5) years each (the "Extended Term"). Tenant must give Lessor notice in writing at least ninety (90) days prior to the end of the original term and Extended Term in order to exercise its option to renew. Each Extended Term shall be upon the same terms and conditions as set out in the Lease except that the Base Rent shall be \$14.68 per square foot for the first Extended Term and \$15.12 per square foot for the second Extended Term.

**3.4. Rent.**

a. **Base Rent.** The Tenant shall pay rent to the Lessor, at the rate of \$14.25 per square foot, in equal monthly installments of Two Thousand Eight Hundred Sixty and 69/100 Dollars (\$2,860.69), starting on the Commencement Date. Monthly installments of rent shall be due and payable in advance on the first day of each calendar month. Rent for any partial month of occupancy shall be prorated. Rent shall be paid to the Lessor at the address shown above or any other place designated in writing by the Lessor. Rent that is more than five (5) days late shall incur a late charge of five percent (5) which shall be due and payable immediately.

b. **Additional Rent.** The Tenant shall pay for all other services contracted for by the Tenant as soon as an invoice is presented so that no past due accounts arise. In addition, any fees, costs, or expenses incurred by the Lessor for enforcing the Tenant's obligations under this Lease, including reasonable attorneys' fees, shall be additional rent owing under the Lease and shall be due and payable immediately by the Tenant.

c. **Covenants Concerning Rent Payment.** Tenant shall pay the Rent promptly when due on the first day of each month, without notice or demand, and without any abatement, deduction or setoff, except as may otherwise be expressly and specifically provided in this Lease. No payment by Tenant, or receipt or acceptance by Lessor, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Lessor may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Lessor. A payment by Tenant of Rent or any other sum due under this Lease shall not be deemed paid by Tenant until the payment (i) is actually received by Lessor, and (ii) has cleared the banking system and been fully credited to Lessor's account.

**4.5. Security Deposit.** Tenant shall deposit with Lessor the sum of zero dollars in cash (the “*Security Deposit*”), representing security for the performance by Tenant of the covenants and obligations hereunder. The Security Deposit shall be held by Lessor, without interest, in favor of Tenant; provided, however, that no trust relationship shall be deemed created thereby and the Security Deposit may be commingled with other assets of Lessor. If Tenant defaults in the performance of any of its covenants hereunder, Lessor may, without notice to Tenant, apply all or any part of the Security Deposit, to the extent required for the payment of any Rent or other sums due from Tenant hereunder, in addition to any other remedies available to Lessor. In the event the Security Deposit is so applied, Tenant shall, upon demand, immediately deposit with Lessor a sum equal to the amount so used. If Tenant fully and faithfully complies with all the covenants and obligations hereunder, the Security Deposit (or any balance thereof) shall be returned to Tenant within thirty (30) days after the last to occur of (i) the date the Term expires or terminates or (ii) delivery to Lessor of possession of the Premises. Lessor may deliver the Security Deposit to any purchaser of Lessor’s interest in the Premises, and thereupon Lessor shall be discharged from any further liability with respect to the Security Deposit.

**5.6. Acceptance of Occupancy.** The Tenant shall commence occupancy of the Premises on the Commencement Date and begin paying Rent as required by this Lease. Tenant acknowledges that neither Lessor nor any representative of Lessor has made any representation as to the suitability of the foregoing (including compliance with all applicable laws and ordinances) for Tenant’s intended use.

**6.7. Use.** The Premises are to be used and occupied by the Tenant exclusively for an office and related services. Any change in the use of the Premises by the Tenant shall require written approval from the Lessor. Tenant shall keep the Premises professional, organized and clean at all times. The use of the Premises is subject to the reasonable rules and regulations established by Lessor as well as the requirements of the Condominium Master Deed and Bylaws.

**7.8. Signs.** Tenant shall not affix any sign of any size or character to any portion of the Property, without prior written approval of Lessor, which approval shall not be unreasonably withheld or delayed. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to either or both of the Property and the Premises caused by, or resulting from, such removal.

**8.9. Compliance with Laws.** Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, rules, regulations and requirements now or hereafter in force and all judicial and administrative decisions pertaining thereto in connection with the enforcement thereof, and all recorded easements, covenants and restrictions (collectively, “Laws”), pertaining to the Property, the Premises and Tenant’s use and occupancy thereof. If any license or permit is required for the conduct of Tenant’s business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Lessor of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to the Property, the Premises and the use or occupation thereof.

**9.10. Hazardous Materials.** Except only to the extent necessary and appropriate to lawfully and in good faith operate Tenant’s business at the Premises in strict accordance with Section 6 and all other provisions of this Lease, and consistent with good and safe business practices, Tenant shall not conduct, authorize, permit or allow the generation, transportation, storage, use, treatment or disposal of any Hazardous Material (defined below) at, to, from, on or in the Premises. If, at any time or from time to time during the Term (or any extension thereof), any Hazardous Material (defined below) is generated, transported, stored, used, treated or disposed of at, to, from, on or in either or both of the Premises and the Property by, or as a result of any act or omission of, or under the direction,

supervision or control of, Tenant or any member, partner, shareholder, parent, subsidiary, affiliate, customer, licensee, invitee, agent, employee, representative, supplier, contractor, subcontractor, assignee or subtenant of Tenant (collectively, “*Tenant’s Parties*”): (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all laws (federal, state or local) relating to Hazardous Materials, including, but not limited to, all Environmental Laws (defined below), and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) at Tenant’s sole cost, Tenant will at all times during the Term (and at all times thereafter that Tenant remains in possession of the Premises) take all reasonable measures to prevent the release or discharge of Hazardous Materials at or from the Premises, which measures shall include, but are not limited to, making regular inspections of all areas, containers and apparatus in which Hazardous Materials are stored, used, generated or otherwise present, and installing and maintaining appropriate containment and secondary containment devices; (iii) Tenant shall promptly provide Lessor with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Property, or the generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; and (iv) Lessor and its respective agents and employees shall have the right to either or both (x) enter the Premises and (y) conduct appropriate tests for the purposes of ascertaining Tenant’s compliance with all applicable laws (including Environmental Laws), rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of either or both of the Premises and the Property; and (iv) upon written request by Lessor, Tenant shall provide Lessor with the results of reasonably appropriate tests of air, water or soil that Tenant had previously performed to demonstrate that Tenant complies with all applicable laws, rules or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of either or both of the Premises and the Property. This Section 9 does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this Section 9. Tenant covenants to investigate, clean up and otherwise remediate, at Tenant’s sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of Tenant or Tenant’s Parties during the Term. Such investigation and remediation shall be performed only after Tenant has obtained Lessor’s prior written consent; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining such consent. All remediation shall be performed in strict compliance with Environmental Laws and to the reasonable satisfaction of Lessor. Tenant shall be liable for any and all conditions covered hereby, and for all costs relating thereto, that are caused or created by any or all of Tenant and any or all of Tenant’s Parties. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first obtaining Lessor’s written consent (which consent may be given or withheld in Lessor’s sole, but reasonable, discretion) and affording Lessor the reasonable opportunity to participate in any such proceedings. As used herein, the term (x) “Environmental Laws” shall mean any and all laws pertaining to Hazardous Materials or that otherwise deal with, or relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind; and (y) “Hazardous Materials” shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Environmental Law. The undertakings,

covenants and obligations imposed on Tenant under this Section 9 shall survive the termination or expiration of this Lease.

**10.11.** Repairs and Maintenance.

11.1. Lessor's Obligations

. Lessor shall maintain in good order, condition, and repair the portions of the Building, the Property and the Premises that are not the obligation of Tenant or any other tenant in the Building. Tenant shall give Lessor prompt notice of any damage to or defective condition in any part or appurtenance of the Building systems serving, located in, or passing through the Premises or any other damage that Lessor is obligated to repair.

11.2. Tenant's Obligations

. Tenant, at Tenant's sole expense, shall maintain, repair, and replace the Premises as needed to keep all interior, non-structural portions of the Premises in good order, condition, and repair, including, without limitation, the following: (a) all plumbing and sewage facilities, including but not limited to all plumbing fixtures, pipes, fittings, or other parts of the plumbing system that exclusively serve the Premises; (b) all fixtures, interior walls, floors, carpets, draperies, window coverings, and ceilings; (c) all interior windows, doors, entrances, and plate glass; and (d) all electrical wiring, facilities, and equipment, including, without limitation, any non-standard light fixtures, lamps, bulbs, tubes, fans, vents, exhaust equipment, and systems that exclusively serve the Premises.

11.3. Damage by Tenant

. Except for ordinary wear and tear, Tenant shall promptly reimburse Landlord for any costs that Landlord may incur in making repairs and alterations in and to the Premises, the Building, Building Systems, the Property, or facilities, systems, or equipment of the Building, where the need for such repairs or alterations is caused by any of the following: (a) Tenant's use or occupancy of the Premises in a fashion that contravenes any provision of this Lease; (b) the installation, removal, use, or operation of Tenant's Property; (c) the moving of Tenant's Property into or out of the Building; or (d) any misuse, tortious act, omission, or negligence of any Tenant or its agents.

**11.12. Surrender of the Premises and Holdover.** The Tenant shall surrender the Premises to the Lessor when this Lease expires, broom clean and in the same condition as on the Commencement Date, except for normal wear and tear. Tenant shall remove all of Tenant's property from the Premises and shall remove all alterations and restore all improvements removed or modified by Tenant except as otherwise provided for in the Lease or directed by the Lessor. Tenant shall surrender to Lessor any and all keys, access cards, computer codes or any other items used to access the Premises. If Tenant remains in possession after the end of the Term hereof or any earlier termination date of the Lease, Tenant shall pay 150% of the aggregate of the Base Rent and Additional Rent last prevailing hereunder and shall be a tenant-at-will. This shall not constitute a waiver by Lessor of any re-entry rights of Lessor hereunder or under law.

**12.13. Taxes.** Lessor shall pay all real and personal property taxes and assessments levied against the Premises during the term of this Lease, if any. All taxes levied on personal property owned or leased by the Tenant are the sole responsibility of the Tenant.

**13.14. Alterations.** Tenant may remodel and improve the Premises only as set forth herein. Any remodeling or improvements that significantly alter the Premises or require an investment by the Tenant in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) shall require written approval from the

Lessor, which may be withheld in Lessor's sole discretion. Any work shall be done without injury to any structural portion of the building. Any improvements constructed on the Premises permitted to remain at the termination of the Lease shall become the property of the Lessor. Any alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Property established by Lessor. Tenant shall obtain all necessary governmental permits and certificates and shall provide Lessor with "as built" plans, copies of all construction contracts, permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers. Tenant cause those contractors, materialmen and suppliers engaged to perform alterations to deliver to Lessor certificates of insurance (in a form reasonably acceptable to Lessor) evidencing policies of commercial general liability insurance (providing the same coverages as required in for Tenant in Section 17) and workers' compensation insurance.

**14.15. Assignment and Subletting.** Tenant may not assign, sublet, or otherwise transfer or convey its interest or any portion of its interest in the Premises, whether voluntarily or involuntarily, without written consent from the Lessor. The Lessor shall have total discretion on its approval of proposed assignments or subleases.

**15.16. Trade Fixtures.** All trade fixtures and movable equipment installed by the Tenant in connection with the business it conducts on the Premises shall remain the property of the Tenant and shall be removed when this Lease expires. The Tenant shall repair any damage caused by the removal of such fixtures, and the Premises shall be restored to the original condition.

**16.17. Insurance.**

a. **Insurance to be Maintained by Lessor.** Lessor shall maintain (a) "all-risk" property insurance policy covering the Property (at its full replacement cost), but excluding Tenant's property, and (b) commercial general public liability insurance covering Lessor for claims arising out of liability for bodily injury, death, personal injury, advertising injury and property damage occurring in and about the Property and otherwise resulting from any acts and operations of Lessor, its agents and employees.

b. **Insurance to be Maintained by Tenant.** Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below (collectively, "***Tenant's Policies***"). All Tenant's Policies shall (a) be issued by an insurance company with a Best rating of A-X or better and otherwise reasonably acceptable to Lessor and shall be licensed to do business in Michigan; (b) provide that said insurance shall not be canceled or materially modified unless 30 days' prior written notice shall have been given to Lessor; and (c) otherwise be in such form, and include such coverages, as Lessor may reasonably require. All Tenant's Policies (or, at Lessor's option, Certificates of Insurance, in a form reasonably acceptable to Lessor, evidencing said Tenant's Policies), shall be delivered to Lessor by Tenant upon commencement of the Lease and renewals thereof shall be delivered at least 30 days prior to the expiration of each Tenant's Policy. Tenant shall give prompt notice to Lessor of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Premises or Property.

c. **General Liability and Auto Insurance.** Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of (i) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 annual general aggregate; (ii) comprehensive liability insurance covering Tenant against any losses arising out of liability for personal injuries or deaths of persons and property damage occurring in or about the Premises in the amount of not less than \$1,000,000, combined single limit. The Tenant's Policies required by this Section shall (a) name Lessor, and any party holding an interest to which this Lease may be subordinated as additional insureds; (b) provide coverage on an occurrence basis; (c) provide coverage for the indemnity obligations of Tenant under this Lease; (d)

contain a severability of insured parties provision and/or a cross liability endorsement; (e) be primary, not contributing with, and not in excess of, coverage that Lessor may carry; and (f) provide coverage with no exclusion for a pollution incident arising from a hostile fire.

d. Property and Workers' Compensation Insurance. Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy or Policies of (i) "all-risk" property insurance covering Tenant's property (at its full replacement cost), and damage to other property resulting from any acts or operations of Tenant, and (ii) workers' compensation insurance per the applicable Michigan statutes covering all employees of Tenant.

e. Waiver of Subrogation. To the extent permitted by law, and without affecting the coverage provided by insurance required to be maintained hereunder, Lessor and Tenant each waive any right to recover against the other for (a) damages to property, (b) damages to all or any portion of either or both of the Premises and the Property, (c) claims arising by reason of the foregoing, to the extent such damages and claims are insured against, or required to be insured against, by Lessor or Tenant under this Lease, or (d) claims paid by Tenant's workers' compensation carrier. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this section

**17.18. Tenant's Liability.** All the Tenant's personal property, including trade fixtures, on the Premises shall be kept at the Tenant's sole risk, and the Lessor shall not be responsible for any loss of business or other loss or damage that is occasioned by the acts or omissions of persons occupying adjoining Premises or any part of the Premises adjacent to or connected with the Premises.

**18.19. Damage or Destruction.** Tenant shall give prompt notice to Lessor of (a) any fire or other casualty to the Premises or the Property. Tenant shall be liable for any claim, loss, damage, cost or expense resulting from Tenant's failure to give Lessor the foregoing notice in a timely manner. Subject to the provisions below, if either or both of the Property and the Premises is damaged by fire or other insured casualty, Lessor shall repair the damage and restore and rebuild the Property and/or the Premises (except for Tenant's property) with reasonable dispatch after (x) notice to it of the damage or destruction and (y) the adjustment of the insurance proceeds attributable to such damage. Subject to the provisions of below, Tenant shall not be entitled to terminate this Lease and no damages, compensation or claim shall be payable by Lessor for purported inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Property pursuant to this Section. Lessor shall use its diligent, good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises, but Lessor shall not be required to do such repair or restoration work except during normal business hours of business days.

a. Rental Abatement Provided that any damage to either or both of the Property and the Premises is not caused by, or is not the result of acts or omissions by, any or all of Tenant and Tenant's Parties, if (a) the Property is damaged by fire or other casualty thereby causing the Premises to be inaccessible or (b) the Premises are partially damaged by fire or other casualty, the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant.

b. Total Destruction. If the Property or the Premises shall be totally destroyed by fire or other casualty, or if the Property shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Lessor): (i) its repair or restoration requires more than 180 days or (ii) such repair or restoration requires the expenditure of more than 50% of the full insurable value of the Property immediately prior to the casualty or (iii) the damage (x) is less than the amount stated in (ii) above, but more than 10% of the full insurable value of the

Property; and (y) occurs during the last six months of Lease Term, Lessor and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within ten (10) days after said contractor or architect delivers written notice of its opinion to Lessor and Tenant, but in all events prior to the commencement of any restoration of the Premises or the Property by Lessor. In such event, the termination shall be effective as of the date upon which either party receives timely written notice from the other terminating this Lease pursuant to the preceding sentence. If neither Lessor nor Tenant timely delivers a termination notice, this Lease shall remain in full force and effect. Notwithstanding the foregoing, if (A) any holder of a mortgage encumbering the Property or Lessor pursuant to a ground lease encumbering the Property (collectively, "Superior Parties") or other party entitled to the insurance proceeds fails to make such proceeds available to Lessor in an amount sufficient for restoration of the Premises or the Property, or (B) the issuer of any casualty insurance policies on the Property fails to make available to Lessor sufficient proceeds for restoration of the Premises or the Property, then Lessor may, at Lessor's sole option, terminate this Lease by giving Tenant written notice to such effect within thirty (30) days after Lessor receives notice from the Superior Party or insurance company, as the case may be, that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Lessor of Lessor's election to terminate this Lease. Lessor shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease by virtue of any delays in completion of repairs and restoration. For purposes of this Section only, "full insurable value" shall mean replacement cost, less the cost of footings, foundations and other structures below grade. If this Lease is not terminated the Rent shall be abated from the date of loss to the date the Premises is ready to be re-occupied by Tenant.

c. Insurance Proceeds. Lessor shall not be obligated to expend in repairs and restoration an amount in excess of the proceeds of insurance recovered with respect to any casualty. Tenant acknowledges that Lessor shall be entitled to the full proceeds of any insurance coverage, whether carried by Lessor or Tenant, for damage to either or both of the Premises and the Property (excluding any proceeds for damage to Tenant's property). In the event that either or both of the Premises and the Property are not repaired or reconstructed, all proceeds of insurance (excluding any proceeds covering Tenant's Property), whether carried by Lessor or Tenant, shall be payable to Lessor. Lessor's duty to repair the Premises and the Property (excluding Tenant's Property) is limited to repairing the Premises to the condition existing immediately prior to such fire or other casualty.

**19.20. Condemnation.** If any part of the Premises is taken for any public or quasi-public purpose pursuant to any power of eminent domain, or by private sale in lieu of eminent domain, either the Lessor or the Tenant may terminate this Lease upon notice which must be delivered within thirty (30) days of the notice of taking, effective the date the public authority takes possession. All damages for the condemnation of the Premises, or damages awarded because of the taking, shall be payable to and the sole property of the Lessor. However, Tenant will be entitled, if permitted by law, to claim a separate award in such condemnation proceedings for relocation costs, fixtures and equipment installed and paid for by Tenant.

**20.21. Indemnity.** Tenant shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from an adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the lease term from any cause, with respect to the Tenant or the Premises, including but not limited to contamination by hazardous material as a result of Tenant's use of activities, or of Tenant's agents or contractors. This indemnification of Lessor by Tenant includes, without limitation, costs incurred in connection with any investigation or site conditions or any cleanup, remedial,

removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater on or under the Premises. This indemnity excludes liability resulting from the intentional acts or gross negligence of the Lessor or its employees, agents, invitees. Lessor shall indemnify, defend, and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from an adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the lease term from any cause, with respect to the Lessor or the Premises, including but not limited to contamination by hazardous material as a result of Lessor use of activities, or of Lessor agents or contractors. This indemnification of Tenant by Lessor includes, without limitation, costs incurred in connection with any investigation or site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater on or under the Premises. This indemnity excludes liability resulting from the intentional acts or gross negligence of the Tenant or its employees, agents, invitees.

**21.22. Default and Reentry.** If the Tenant fails to pay rent within ten (10) days of when due; if the Tenant fails to perform any other obligations under this Lease within ten (10) days after receiving written notice of the default from the Lessor; if the Tenant makes any assignment for the benefit of creditors or a receiver is appointed for the Tenant or its property; or if any proceedings are instituted by or against the Tenant for bankruptcy (including reorganization) or under any insolvency laws, the Lessor may terminate this Lease, reenter the Premises, and seek to relet the Premises on whatever terms the Lessor thinks advisable. Notwithstanding reentry by the Lessor, the Tenant shall continue to be liable to the Lessor for all Rent and any other sums owed under this Lease and for any rent deficiency that results from reletting the Premises during the term of this Lease as well as all damages Lessor is entitled to recover under any provision of this Lease or at law or in equity, and all costs and expenses incurred in the enforcement of this Lease. Notwithstanding any reletting without termination, the Lessor may at any time elect to terminate this Lease for any default by the Tenant by giving the Tenant written notice of the termination.

**22.23. Subordination; Notices to Superiors Lessors and Mortgagees; Attornment.**

a. **Subordination.** Provided that Tenant is provided with a customary subordination, nondisturbance and attornment agreement duly executed by the holder of any mortgage or the landlord pursuant to any ground lease, this Lease shall be subject and subordinate at all times to (a) all ground leases or underlying leases that may now exist or hereafter be executed affecting either or both of the Premises and the Property and (b) any mortgage that may now exist or hereafter be placed upon, and encumber, any or all of (x) the Property; (y) any ground leases or underlying leases for the benefit of the Property; and (z) all or any portion of Lessor's interest or estate in any of said items. Notwithstanding the foregoing, Lessor shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases that benefit the Property or any such mortgage liens to this Lease. Tenant shall execute and deliver, upon demand by Lessor and in the form reasonably requested by Lessor, any additional documents evidencing the priority of subordination of this Lease with respect to any such ground leases or underlying leases for the benefit of the Property or any such mortgage.

b. **Estoppel Certificates.** Tenant agrees, from time to time and within ten (10) days after request by Lessor, to deliver to Lessor, or Lessor's designee, an estoppel certificate stating such matters pertaining to this Lease as may be reasonably requested by Lessor. Failure by Tenant to timely execute and deliver such certificate shall constitute an acceptance of the Premises and acknowledgment by Tenant that the statements included therein are true and correct without

exception. Lessor and Tenant intend that any statement delivered pursuant to this section may be relied upon by any prospective purchaser or mortgagee of the Property or of any interest therein or any other Lessor designee.

c. **Transfer for Lessor.** In the event of a sale or conveyance by Lessor of the Property, the same shall operate to release Lessor from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to Lessor's successor in interest with respect thereto and agrees to attorn to such successor.

**23-24. The Tenant's Possession and Quiet Enjoyment.** As long as the Tenant pays the Rent as specified in this Lease and performs all its obligations under this Lease, the Tenant may peacefully and quietly hold and enjoy the Premises for the term of this Lease.

**24-25. Lessor's Rights.** Lessor and its respective agents, employees and representatives shall have the right to enter the Premises at any time or times upon reasonable prior notice (except in the event of emergency): (a) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Property or providers of capital to Lessor and its affiliates; and (b) to make such repairs, alterations, additions and improvements in or to all or any portion of either or both of the Premises and the Property as Lessor is required or desires to make. Lessor shall be allowed to take all materials into and upon the Premises that may be required in connection with any repairs, alterations, additions or improvements, without any liability to Tenant and without any reduction or modification of Tenant's covenants and obligations hereunder; provided, however, that Lessor shall use reasonable efforts to limit interference with Tenant's business operations and Tenant's occupancy and use of the Premises. During the period of three (3) months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Lessor and its agents may exhibit the Premises to prospective tenants. Additionally, Lessor shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to designate and approve, prior to installation, all types of signs; (ii) to have pass keys, access cards, or both, to the Premises; and (iii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than thirty (30) consecutive days or without notice to Lessor of Tenant's intention to reoccupy the Premises.

**25-26. Gross Lease.** This Lease is a gross lease. All rent is to be paid to the Lessor absolutely and without right of set off without regard to whether the premises are habitable, destroyed or condemned. Tenant is responsible to pay all costs of maintenance or operation of Premises.

**26-27. Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Lessor Base Rent or Additional Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

**27-28. Legal Costs.** Any party in breach or default under this Lease (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any legal fees and court (or other administrative proceeding) costs or expenses that the Nondefaulting Party incurs in connection with the breach or default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, in the event of litigation, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs, which

sum shall be paid by the losing party. Tenant shall pay Lessor's attorneys' reasonable fees incurred in connection with Tenant's request for Lessor's consent under provisions of this Lease governing assignment and subletting.

**28.29. Entire Agreement.** This Lease contains the entire agreement of the parties with respect to its subject matter. This Lease may not be modified except by a written document signed by all the parties to this Lease.

**29.30. Notices.** Any notice required to be given pursuant to this Lease shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service, addressed to the other party at the addresses set forth below (or to such other address as the parties may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service:

If to Lessor:	City of Dowagiac 241 S. Front Street Dowagiac, Michigan 49047 Attn:
With a copy to:	Kotz Sangster Wysocki P.C. 12 Longmeadow Village Drive, Suite 100 Niles, Michigan 49120 Attn: Mowitt S. Drew., Esq.
If to Tenant:	Van Buren/Cass District Health Department 57418 CR 681 Hartford, Michigan 49057

**30.31. Governing Law; Construction.** This Lease shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflicts of law principles. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Tenant, shall be construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

**31.32. Binding Effect.** Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Tenant hereby releases Lessor named herein from any obligations of Lessor for any period subsequent to the conveyance and transfer of Lessor's ownership interest in the Premises. In the event of such

conveyance and transfer, Lessor's obligations shall thereafter be binding upon each transferee (whether successor Lessor or otherwise).

**32.33. WAIVER OF JURY TRIAL.** LESSOR AND TENANT ACKNOWLEDGE THAT THE RIGHT TO A TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS LEASE.

**33.34. Counterparts.** This Lease may be executed in counterparts, each counterpart constituting an original and together constituting one document. Facsimile signatures of the parties executing this Lease shall bear the same weight and authority as if an original signature.

“LESSOR”

“TENANT”

CITY OF DOWAGIAC, a Michigan  
municipal corporation

VAN BUREN/CASS DISTRICT  
HEALTH DEPARTMENT

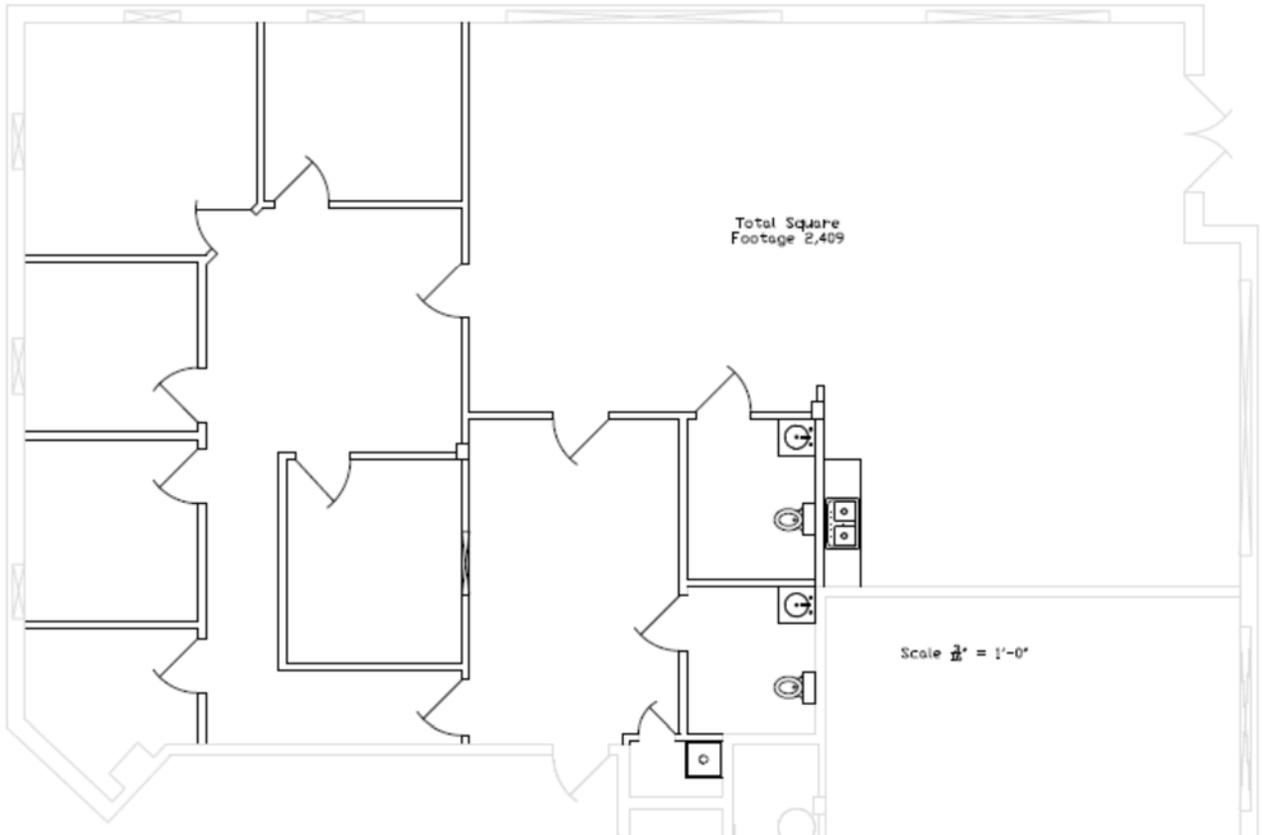
By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit A**  
**Lessor's Work and**  
**Description of Premises**



***CITY OF DOWAGIAC***

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**MEMO TO:** Mayor Lyons and City Council Members

**FROM:** Kevin P. Anderson, City Manager

**DATE:** January 22, 2016

**SUBJECT:** Construction of Office Suite at James E. Snow Professional Building

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In October City Council approved a lease agreement with the law firm May, Oberfell, Lorber for office space on the first floor of the James E. Snow Professional Building. In that lease the city is obligated to build out the interior and the total cost for construction is estimated to be \$72,000.

City staff has been coordinating the subcontractors for this work and have been able to continue using the same subcontractors that were used for other parts of the building so that efficiencies of construction can occur.

The attached resolution formalizes and clarifies how the contractual obligation to construct the interior will be fulfilled.

If you have questions regarding this matter please feel free to contact me.

**RECOMMENDATION**

Authorize City Manager to to act as signator for Purchase Orders with necessary subcontractors so that the office suite described in the executed lease with May, Oberfell, Lorber can be constructed and occupied as quickly as possible.

Support Documents:  
Cover Memo-City Mgr.  
Resolution

Councilmember \_\_\_\_\_ offered and moved the adoption of the following resolution; seconded by Councilmember \_\_\_\_\_.

WHEREAS, the City of Dowagiac approved a lease agreement with the law firm May, Oberfell, Lorber for office space on the first floor of the James E. Snow Professional Building; and

WHEREAS, the estimated cost to construct the office suite for law firm May, Oberfell, Lorber is \$72,000.

NOW, THEREFORE, BE IT RESOLVED that the City of Dowagiac, hereby approves the estimate for construction of an office suite for law firm May, Oberfell, Lorber.

BE IT FUTHER RESOLVED that the City Manager be authorized and directed to act as signator for Purchase Orders with necessary subcontractors so that the office suite described in the executed lease with May, Oberfell, Lorber can be constructed and occupied as quickly as possible.

ADOPTED / REJECTED

Councilmember \_\_\_\_\_ offered and moved the adoption of the following resolution; seconded by Councilmember \_\_\_\_\_.

**WHEREAS,** the following information has been reviewed by the City Manager and City Treasurer and is being presented to City Council with a recommendation to approve invoices and payroll #9 for the period ending 01/21/16.

Invoices	\$586,686.48
Payroll #9	\$194,308.69
	<hr/>
Total	\$780,995.17

**BE IT RESOLVED** that the City Manager and City Treasurer are hereby authorized and directed to pay the following bills and payroll due:

<u>BILLS</u>	<u>PAYROLL</u>	<u>TOTAL</u>
\$586,686.48	\$194,308.69	\$780,995.17

Ayes:

Nays:

Absent:

Abstain:

Jane P. Wilson, City Clerk

Vendor		Description	Amount
ABSOPURE WATER COMPANY	55501234	H & C COOLER RENTAL - CH	8.00
ABSOPURE WATER COMPANY	83874044	BOTTLED WATER - 26461 NUBOUR	64.50
ABSOPURE WATER COMPANY	55507195	C & C COOLER RENTAL - 26688 NUBOUR	6.00
ADAMS, SHANNON	01/21/2016	UB refund for account: 02-3357-13	282.71
AIRGAS GREAT LAKES	9932914371	WELDING SUPPLIES	67.60
ALLEN SUPPLY COMPANY, INC.	32169	GRAB BARS/SIGNS - ATTY OFFICE	170.00
ALLEN SUPPLY COMPANY, INC.	32168	DOORS/FRAMES/HINGES/LATCHES - ATTY	3,779.00
AMERICAN ELECTRIC POWER	044-619-354-0-7	M-62 W LIFT STATION	50.25
AMERICAN ELECTRIC POWER	049-501-336-1-3	CCWS - VANDALIA TOWER	30.06
AMERICAN ELECTRIC POWER	CDOW_201512_01	DEC 2015 ENERGY	390,436.12
AMERIFIRST HOME MORTGAGE	1/11/16	DUPLICATE TAX PAYMENT	171.20
AMERIGAS - HARTFORD 5254	3047825397	PROPANE - PARKS SHOP	339.20
AMWAY GRAND PLAZA HOTEL	1/13/16	RESERVATION #3219496145 GRINNEWALD &	330.00
AUSRA EQUIPMENT & SUPPLY, INC	IN84222	NUTS/BOLTS (CUTTING EDGE #150)	33.52
AUTO VALUE	377-10664	CORE DEPOSIT - BATTERY (#131)	12.50
AUTO VALUE	377-10661	BATTERY #131	98.35
BAZAN, STACEY	3346483077	CCDET TX REIMBURSEMENT 11/26 - 12/25/15	60.00
BAZAN, STACEY	3332894476	CCDET TX REIMBURSEMENT 10/26 - 11/25/15	60.00
BERRIEN COUNTY FARM BUREAU OIL CO	721638	4 TIRES, STEMS & LABOR (#07)	818.00
BOYER, JESSICA LAURA	01/21/2016	UB refund for account: 06-3106-4	285.31
CAREERTRACK	1/12/16	TRAINING - GRABEMEYER	299.00
CASS AREA UTILITY AUTHORITY	1-19-16	CASS WATER SYSTEM	6,613.35
CASS CNTY TRANSPORTATION AUTHORITY	1894	DISPATCHING SERVICES-DEC 2015	14,543.68
CASS COUNTY	2016-16	POSTAS FOR 2016 PERSONAL PROPERTY	107.80
CINTAS LOCATION #336	336-01904	MATS & UNIFORMS	990.40
CINTAS LOCATION #336	336-01904	MATS	85.69
CINTAS LOCATION #336	336-01904	MATS & UNIFORMS	647.35
CIVIC SYSTEMS, LLC	CVC13674	SEMI-ANNUAL SUPPORT FEE	299.00
CLARK HILL PLC	632891	INDUSTRIAL PARK REAL ESTATE - SVC	41.00
COMCAST	8771402380126332	INTERNET SERVICE - FIRE DEPT	84.90
DARLENE SERRATOS	1/11/16	J SNOW BLDG - INSULATION/PAINT/CEILING	5,800.00
DAVIS, DAVID	287243883201	SGT TX REIMBURSEMENT 11/18 - 12/17/15	45.00
DESILETS, LAURA	01/21/2016	UB refund for account: 05-0937-9	184.16
DIANA FRONTCAK	7748	REIMBURSE SEWER RODDING 510 N. FRONT ST.	260.00
DUST BUSTERS	1/15/16	CLEANING SERVICES 02/16	1,625.00
DUSZYNSKI, KATE	01/21/2016	UB refund for account: 04-1664-13	113.11
ELMER'S LOCKSMITH	7313	DOOR HANDLE REPLACEMENT	566.30
FIA CARD SERVICES	MEBGHD7AW1218	CAUA MEETING	21.67
FIA CARD SERVICES	MEBAUY4EA1223	CAUA MEETING	18.43
FIA CARD SERVICES	7856750013	KEYS TO CITY	221.50
FIA CARD SERVICES	17702	SAND BAGS	59.95
FIA CARD SERVICES	6936665	SERVER CLOUD BACKUP	59.99
FIA CARD SERVICES	MHFD3VQ47J	IPHONE BACKUP	0.99
FIA CARD SERVICES	CNTCT-14273882	WIKIPEDIA SUBSCRIPTION	10.00
FIA CARD SERVICES	383193008	FAX SERVICE - LIFT STATION ALARMS	24.99
FIA CARD SERVICES	772-SO3681309	CABINET HEATER - CCWS TOWER	276.72
FIA CARD SERVICES	2935990019	LIFT STATION REPORTS - FAX SERVICE	24.99
FIA CARD SERVICES	4S52X78	NEWSLETTER SUBSCRIPTION	22.00
FIA CARD SERVICES	KH7GZ-M3A30-3I1	BUSINESS CARDS - RUTKOWSKE	42.39

Vendor		Description	Amount
FIA CARD SERVICES	QRDZ-M3A49-506	BUSINESS CARDS - LEWIS	42.39
FLAGS UNLIMITED	1/15/16	FLAGS	1,200.00
FRED KIRSCH	1/7/16	REFUND (14-160-200-311-00)	227.25
GARAGE DOORS PLUS MORE, INC	2453	4 BUTTON REMOTES - DPS GARAGE	253.00
GEMPLER'S	SI02184766	INSULATED GLOVES/CHEMICAL RESIST GLOVES	787.00
GEMPLER'S	SI02185222	EAR PLUGS	97.70
GHD SERVICES INC	738766	OMM ACTIVITIES	1,221.25
GLOBAL TELEMATIC SOLUTIONS, LLC	2015-00000722	VEHICLE TRACKING SERVICE - ADD DART	177.65
GLOBAL TELEMATIC SOLUTIONS, LLC	22140	VEHICLE TRACKING SERVICE	295.00
GOVT FINANCE OFFICERS ASSOCIATION	1/12/16	SEMINAR - GRABEMEYER	85.00
GUERRERO, HOMAR	01/21/2016	UB refund for account: 12-1678-8	164.19
HALE'S HARDWARE, INC	C146224	OP SUPPLIES/EQ MTCE	32.06
HALE'S HARDWARE, INC	D101527	OP SUPPLIES/VEHICLE MTCE	21.32
HALE'S HARDWARE, INC	D100059	SCRUB BRUSHES/TIMER/ZIPLOC BAGS	39.53
HALE'S HARDWARE, INC	C143772	LIGHT BULBS	17.45
HALE'S HARDWARE, INC	C145489	ADHESIVE - RADAR/VEHICLE	5.33
HALE'S HARDWARE, INC	C145844	CLR CLEANER #3	3.99
HALE'S HARDWARE, INC	B100307	TOILET/CONNECTORS/ELBOWS/COUPLINGS/VALVE	233.07
HALE'S HARDWARE, INC	C145561	MOUSE TRAPS - DPS GARAGE	4.44
HALE'S HARDWARE, INC	C145522	NEW WATER SUPPLY - DPS GARAGE	94.41
HARDING'S MARKET, INC	337017	OP SUPPLIES	34.95
HUNTINGTON NATIONAL BANK	1/11/16	DUPLICATE TAX PAYMENT	261.41
IBEX INSURANCE AGENCY	0039753772	HEALTH INSURANCE PREMIUM-FEB 2016	59,824.49
IBEX INSURANCE AGENCY	1/20/16	DENTAL INSURANCE PREMIUM-FEB 2016	2,054.09
INTERNATIONAL CODE COUNCIL, INC	1000645942	2015 MI RESIDENTIAL CODE BOOK	132.00
ITRON, INC	402036	CCWS CONTRACT SERVICES - DECEMBER 2015	3,290.00
JOHN & CURT'S BRAKE & ALIGNMENT	1/8/16	ALIGN FRONT END (#15)	40.00
JUDD LUMBER COMPANY, INC	1601-669429	GAP/CRACK SEALANT - DPS GARAGE	28.73
KLUG, PATRICIA	1/7/16	MILEAGE REIMBURSEMENT - LEIN VALIDATIONS	9.20
KW CONSTRUCTION SERVICES, LLC	126568-31	CREW SUPERVISION 12/19/15 - 1/12/16	227.15
LAKE MICHIGAN MAILERS, INC	340089	POSTAGE	5,000.00
LARRY MELTON	1/7/16	REIMBURSE SEWER RODDING - 215 LESTER ST.	225.00
MICHIGAN ASSOCIATION OF FIRE CHIEFS	1/15/16	MAFC DUES 2016	85.00
NASH, ANTHONY T	01/21/2016	UB refund for account: 16-1884-6	115.66
OSTROM, JERID	1/19/16	EDUCATIONAL REIMBURSEMENT	396.87
PETTY CASH	1/19/16	PETTY CASH REIMBURSEMENT	57.47
PORTER, TASHARA	01/21/2016	UB refund for account: 16-1698-10	97.06
POWER LINE SUPPLY, INC	5987317	CONNECTORS - STOCK	176.27
POWERNET GLOBAL COMMUNICATIONS	35968994	LONG DISTANCE SERVICE 12/12/2015 -	26.98
PRECISION ELECTRIC, INC.	0203128	REPAIR WELL PUMP #2	420.00
PREFERRED PRINTING, INC	29053	#10 WINDOW ENVELOPES	140.00
REAL PRO SOLUTIONS, LLC	SP306	CCWS - PLOW VANDALIA TOWER	60.00
REAL PRO SOLUTIONS, LLC	SP307	CCWS - PLOW PENN PUMP HOUSES	70.00
REAL PRO SOLUTIONS, LLC	SP309	CCWS - PLOW VANDALIA TOWER	60.00
REAL PRO SOLUTIONS, LLC	SP308	CCWS - PLOW PENN PUMP HOUSES	70.00
REAL PRO SOLUTIONS, LLC	SP300	CCWS - PLOW PENN PUMP HOUSES	70.00
REAL PRO SOLUTIONS, LLC	SP301	CCWS - PLOW VANDALIA TOWER	60.00
REAL PRO SOLUTIONS, LLC	SP302	CCWS - PLOW VANDALIA TOWER	60.00
REAL PRO SOLUTIONS, LLC	SP303	CCWS - PLOW PENN PUMP HOUSES	70.00

Vendor		Description	Amount
REAL PRO SOLUTIONS, LLC	SP304	CCWS - PLOW PENN PUMP HOUSES	70.00
REAL PRO SOLUTIONS, LLC	SP305	CCWS - PLOW VANDALIA TOWER	60.00
REAL PRO SOLUTIONS, LLC	HB1399	EMERGENCY BOARD UP	60.00
RHOADES MCKEE	259841	ENVIRONMENTAL-LANDFILL	68.75
ROHDY'S HEATING & COOLING, LLC	1/20/16	DOWN PAYMENT FOR HVAC INSTALL - J SNOW	8,000.00
ROHDY'S HEATING & COOLING, LLC	0000007193	REPAIR GAS LEAK IN DPS GARAGE	112.50
SCHERER, JOE DBA LONELY PI	1/15/16	02/16 MONTHLY PMT ACCT 7508450033	6,174.53
SCHILLING'S WASH & WAX	85	CAR WASH-PD	8.00
SEMCO ENERGY GAS COMPANY	0346992.502	GAS SVC 11/25 - 12/29/15	121.08
SEMCO ENERGY GAS COMPANY	0147944.500	GAS SVC 11/30 - 12/30/15	67.24
SEMCO ENERGY GAS COMPANY	0146763.501	GAS SVC 11/30 - 12/30/15	629.54
SEMCO ENERGY GAS COMPANY	0148809.501	GAS SVC 12/01 - 12/31/15	352.05
SEMCO ENERGY GAS COMPANY	0148902.500	GAS SVC 12/1 - 12/31/15	243.35
SEMCO ENERGY GAS COMPANY	0149080.500	GAS SVC 12/1 - 12/31/15	394.06
SEMCO ENERGY GAS COMPANY	0357531.501	GAS SVC 12/15 - 12/31/15	65.06
SEMCO ENERGY GAS COMPANY	0357529.501	GAS SVC 12/1 - 12/31/15	77.59
SEMCO ENERGY GAS COMPANY	0149077.500	GAS SVC 12/1 - 12/31/15	401.41
SEMCO ENERGY GAS COMPANY	0149089.500	GAS SVC 12/1 - 12/31/15	169.82
SEMCO ENERGY GAS COMPANY	0357530.501	GAS SVC 12/1 - 12/31/15	41.51
SEMCO ENERGY GAS COMPANY	0149138.502	GAS SVC 12/1 - 12/31/15	92.63
SHARE CORPORATION	936491	OIL CLNR/WINDSHIELD WASHER & DEICR/RED	567.59
SMITH, DRAKE	01/21/2016	UB refund for account: 15-2435-18	232.15
SMITH, JEFFREY	01/21/2016	UB refund for account: 11-1941-12	112.04
SPARKLE AND SHINE CAR WASH	1105-45	CAR WASH	25.00
SPARTAN STORES LLC	526126	COUNCIL WORKSHOP	100.56
SPARTAN STORES LLC	526166	CHRISTMAS STAFF PARTY	27.46
STATE OF MICHIGAN-BUR OF CONST CODE	1227809	CH - ELEVATOR INSPECTION	185.00
T&R SERVICE COMPANY	76464	PCB ANALYSIS - 17 TRANSFORMERS	255.00
TELE-RAD, INC.	869998	PD VEHICLE LAPTOPS	28,916.32
TERMINIX	7674049	PEST CONTROL - CH	120.00
THE RIDGE COMPANY	653556	CREDIT - BATTERY CORE DEPOSIT (#131)	(158.59)
THE RIDGE COMPANY	651820	BLOWER MOTOR W/WHEEL	72.77
THE RIDGE COMPANY	651984	GAUGE (GAS) #104	45.44
THE RIDGE COMPANY	652476	HOSE FOR TORCHES	46.79
THE RIDGE COMPANY	652579	DE ICER FOR #121	2.49
TOXOPEUS, DAVID	287248782175	CELL PHONE REIMBURSEMENT 12/06 -	60.00
TRACEY BALE	1/7/16	REIMBURSE SEWER RODDING - 318 MCOMBER	225.00
USA BLUEBOOK	839455	LAB SUPPLIES	1,111.56
VANDERVRIES, EDWARD	1/15/16	ASSESSING SERVICES 02/16	1,775.00
WASTE MANAGEMENT OF MICHIGAN, INC.	7440847-2529-3	SLUDGE DISPOSAL	3,365.00
WASTE MANAGEMENT OF MICHIGAN, INC.	7440881-2529-2	20 YD DUMPSTER DELIVERY	192.47
WASTE MANAGEMENT OF MICHIGAN, INC.	8377513-1710-3	DUMPSTERS/TRASH CART - 1/16	522.85
WEST STAR DISTRIBUTING LLC	4714	HYDRAULIC/CYLINDER PLOW #9	247.70
WIGGINS, DANIEL	188028025202	CELL PHONE REIMBURSEMENT 11/24 -	45.00
WIGGINS, DANIEL	188028025202	CELL PHONE REIMBURSEMENT 10/24 -	45.00
WIGHTMAN & ASSOCIATES, INC	51546	INDUSTRIAL PARK CONDOS	731.50
WIGHTMAN & ASSOCIATES, INC	51555	WATER CIP	361.00
WIGHTMAN & ASSOCIATES, INC	51545	QUALITY OF LIFE PROJECTS	1,949.82
WIGHTMAN & ASSOCIATES, INC	51633	ASBESTOS INSP. - 204 COMMERCIAL	2,090.00

INVOICE REGISTER FOR CITY OF DOWAGIAC  
EXP CHECK RUN DATES 01/21/2016 - 01/21/2016  
BOTH JOURNALIZED AND UNJOURNALIZED OPEN AND PAID  
BANK CODE: GEN

Vendor		Description	Amount
WILSON, JANE P.	1/21/16	REIMBURSEMENT FOR POSTAGE	29.40
WOLFORD ELECTRICAL & GEN CONT SVCS	1/20/16	25% DOWN PAYMENT FOR ELECTRIC WORK - J	11,620.00
YEO & YEO PC	370109	FY 2015 AUDIT	6,200.00
		Total:	<u>586,686.48</u>

***CITY OF DOWAGIAC***

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***MEMO TO:*** Mayor Lyons and City Council Members

***FROM:*** Kevin P. Anderson, City Manager

***DATE:*** January 22, 2016

***SUBJECT:*** Groundwater Ordinance

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For several decades the former Sundstrand property has been involved in an extensive environmental cleanup project per EPA requirements and oversight. The cleanup has been successful and is about to enter the phase of long term monitoring.

The city has been working with the MDEQ and the current owners of the property to develop a groundwater protection ordinance for the area to minimize any opportunity for exposure through drinking water sources. This ordinance was drafted by the City's attorney and has been reviewed by the MDEQ and EPA. Council previously held a first reading on November 9, 2015 and we have been awaiting legal counsel's recommendation to proceed with final action. I have received word from legal counsel that the ordinance meets the approval of the MDEQ and the EPA and is now ready for council action.

If you have questions regarding this matter please feel free to contact me.

**RECOMMENDATION**

Second reading of the Groundwater Ordinance.

Support Documents:  
Cover Memo-City Mgr.  
Ordinance

## CITY OF DOWAGIAC, MICHIGAN

### SECTION 2.28 GROUNDWATER USE RESTRICTIONS.

The City of Dowagiac City Council finds that the use of certain groundwater wells and water supplies from such wells for human consumption or other purposes may constitute a public health risk and endanger the safety of the residents of the City of Dowagiac and therefore the City has determined that it is in the best interests of the public health, safety and welfare to prohibit uses of groundwater from wells at properties located in the vicinity of contaminated sites.

A. DEFINITIONS. For the purposes of this Ordinance, the following definitions shall have the following meanings:

*Affected premises* means a parcel of property any part of which is located within a Restricted Zone as defined below.

*Applicant* means a person who applies for the establishment of a Restricted Zone pursuant to this Ordinance.

*Contaminated groundwater* means groundwater in which there are present concentrations of hazardous substances that exceed the residential drinking water criteria established by the Michigan Department of Environmental Quality in operational memoranda or rules promulgated pursuant to Part 201, Environmental Remediation (MCL 324.20101 et seq.), or Part 213, Leaking Underground Storage Tanks (MCL 324.21301a et seq.), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq., dependent upon whether the release is regulated pursuant to Part 201 or Part 213.

*Exacerbation* means “Exacerbation” as defined in Part 201, Environmental Remediation (MCL 324.20101, et seq.).

*Groundwater* means underground water within the zone of saturation.

*MDEQ* means the Michigan Department of Environmental Quality, or its successor agency.

*Person* means any individual, co-partnership, corporation, association, club, joint venture, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

*Release* means a “release” as defined in Part 201, Environmental Remediation (MCL 324.20101 et seq.), or Part 213, Leaking Underground Storage Tanks (MCL 324.21301a et seq.), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 et seq., dependent upon whether an underground storage tank is involved.

*Restricted Zone* means an area or areas described within Section B of this Ordinance within which the prohibition of groundwater wells and the use of groundwater applies.

*Well* means an opening in the surface of the earth for the purpose of removing fresh water through nonmechanical or mechanical means for any purpose other than a public emergency or conducting response actions that are consistent with the Michigan Natural Resources and Environmental Protection Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or other applicable statute.

*USEPA* means the U.S. Environmental Protection Agency.

B. RESTRICTED ZONE.

1. Except as provided in Section E of this ordinance, and after the effective date hereof, no person or legal entity shall install or allow, permit or provide for the installation or utilization of a well on any affected premises on which they have an ownership interest, or lessee or tenant interest or control, within the Restricted Zone. Property within the Restricted Zone shall be serviced only by public water supply.

2. Exhibit A attached hereto is a scaled map illustrating the groundwater well restricted zone (“Restricted Zone”).

3. Exhibit B attached hereto contains the narrative description of the Restricted Zone.

4. Exhibit C attached hereto contains a listing of all affected premises within the Restricted Zone by parcel identification number and address.

5. Exception Wells. Two (2) groundwater exception wells approved by USEPA for purposes other than drinking water (“Exception Wells”) are located in the Restricted Zone at the locations identified on *Exhibit C*, attached hereto, 504 Louise (aquaculture) and 601 Louise (toilet flushing), and may continue to be utilized for the limited purposes identified thereon.

6. A notice shall be sent to the Van Buren/Cass District Health Department advising the health department of the Restricted Zone established hereunder and the health department’s written acknowledgement that it will not issue permits for prohibited wells within the Restricted Zone, shall be filed with MDEQ prior to the effective date of this Ordinance.

C. ADDING NEW RESTRICTED ZONES. The City of Dowagiac City Council may amend this Ordinance to address new Restrictive Zones in accordance with the following procedure:

- (1) An applicant shall first file a request with the City of Dowagiac City Manager advising the City of the applicant's interest in establishing a Restricted Zone pursuant to this article. The notice shall describe the proposed boundaries of the proposed Restricted Zone, the reason for the proposed Restricted Zone, a preliminary map of the proposed Restricted Zone, the proposed time schedule for implementing the proposed Restricted Zone and the proposed groundwater use restrictions to be applicable within the Restricted Zone. The City Manager will, after notifying the City Council of the notice of intent, respond to the applicant with a preliminary and non-binding indication of the City's willingness to consider the proposed Restricted Zone. The City Manager, or his or her designee, may also be an applicant for the purposes of initiating this procedure.
- (2) The Applicant shall seek and obtain the USEPA or MDEQ's approval of the proposed Restricted Zone and proposed groundwater use restrictions to be applicable therein prior to filing an application with the City. In order to be considered by the City, the Restricted Zone must minimize or eliminate the need for restrictive covenants on property that is not owned or operated by and is not subject to remediation by a party responsible for the contaminated groundwater. The creation of a Restricted Zone should have the effect of eliminating the need for non-responsible parties to impose environmental restrictive covenants on their property and be beneficial to the owners or occupants of property that was not the site of a release.
- (3) If any premises, which will be subject to the proposed new Restricted Zone, are not already served by City water service, the applicant shall assure such service is, if it is feasible from an engineering perspective to do so, served with City water service at no cost to the property owners or occupant. The applicant shall have to assure such service

is provided. The applicant shall also provide for the abandonment and plugging of nonconforming wells on any affected premises without cost to the owners or occupants of the premises and in compliance with Section D above. Proof of the provision of such service and the plugging and abandonment of such wells shall be required or an escrow account shall be established therefor in an amount and form acceptable to the City Council.

- (4) After USEPA or MDEQ approves the proposed Restricted Zone as an alternative to restrictive covenants on property on which no release has occurred, an applicant shall file with the City Manager a formal request to the City including, at a minimum, the following information, together with an escrow deposit as required under this section. The information can be in the form of a proposed remedial action plan (RAP), corrective action plan (CAP), or other similar document if appropriate cross-references are made for ease of reference.
  - a. The name, address, and phone number of the applicant, as well as each person having an interest as owner, tenant, easement holder or mortgagee in the real property which is the source or site of the contaminated groundwater, if known.
  - b. The street address and legal description of the real property which is a source or site of the contaminated groundwater, if known, and the nature of the applicant's relationship to that property and involvement concerning the contaminated groundwater.
  - c. The nature and extent of the contaminated groundwater and the contamination causing it, both in summary form in plain English, and in detail in technical terms, stating the types and concentrations of contaminants; a map or survey showing

their current location; a statement of their likely or anticipated impact on groundwater and the nature of the risks presented by the use of the groundwater, as well as the likely or anticipated path of migration if not remediated or corrected and a detailed statement of any plan to remediate, correct, and/or contain the contamination.

- d. A detailed map and narrative description of the proposed Restricted Zone.
- e. The street address and general or legal description (for releases regulated under Part 213) of all affected premises.
- f. The names, addresses (mailing and street), and phone numbers (if readily available) of all persons with an interest as owner, tenant, easement holder or mortgagee of all affected premises.
- g. The location, current status, and usage characteristics of all existing groundwater wells within the proposed restricted zone.
- h. A detailed statement or description of the proposed regulation or prohibition of the use of existing and future wells within the Restricted Zone needed to adequately protect the public from the potential health hazards associated with the contaminated groundwater, including a description of permissible uses of such wells, together with the written consent of the USEPA or MDEQ to such uses of groundwater.
- i. A description and time schedule for any actions the Applicant will take to implement any remediation plan, mitigate the adverse impact of the Restricted Zone (e.g., providing substitute water service), and to properly plug and abandon

any existing wells subject to the use prohibition within the proposed Restricted Zone.

- j. A copy of the information submitted to the USEPA or MDEQ concerning the proposed Restricted Zone, along with a written statement from an USEPA or MDEQ representative with approval authority stating that the proposed Restricted Zone and use regulations have received USEPA or MDEQ approval as part of the response actions for the groundwater contamination. The USEPA or MDEQ approval may be contingent upon the City's establishment of the proposed Restricted Zone pursuant to this Article.
- k. Copies of the notice provided to the Van Buren/Cass District ~~Public~~ Health Department concerning the New Restricted Zones established hereunder, as well as Restricted Zones that may be created in the future. This documentation, accompanying regulations, and the health department's written acknowledgement that it will not issue permits for prohibited wells within the New Restricted Zone(s) must be provided.
- l. Copies of the notices provided to the owners of affected property together with a sworn statement that such notices were provided to all such owners with the details of the manner in which such notices were provided. At minimum, the notice must:
  - 1. Identify the sender of the notice including the sender's name, address, contact person and telephone number;

2. Identify the owner of the property which is the source of the contamination or who is seeking the Restricted Zone including the owner's name and the property address;
  3. State what the effects of the Restricted Zone will be, i.e. how use of the groundwater will be restricted;
  4. Who can be contacted at the City, the USEPA (if applicable), MDEQ and the applicant for more information;
  5. A description of the groundwater plume and a brief description of the nature of the contamination; and
  6. Any other information reasonably requested by the City Manager.
- m. A statement that the applicant agrees to pay all costs incurred by the City in the establishment of the proposed Restricted Zone, including without limitation, reimbursement for staff time, the fees of environmental consultants and legal counsel, the cost of publication, any per diem or other amounts paid to public officials for attending any special meetings, etc. This statement shall also consent to the placement of a lien on the applicant's premises of the amounts due under this section if same, are not timely paid (i.e. paid within thirty (30) days of the issuance by the City of an invoice therefor). That statement shall be in the form acceptable to the City's legal counsel and shall be in a form so as to be recordable in the records of the county register of deeds.
- (5) Along with the application, the applicant shall pay a deposit for escrow of the amount estimated by the City Manager to be the costs incurred by the City for the establishment of the proposed Restricted Zone as described in 4 above. The deposit shall not bear

interest and the City may use funds from it to pay the costs as they are incurred, requiring the applicant to maintain a minimum balance of \$5000.00 in the escrow account. Any failure by the applicant to maintain the escrow as required by this provision may result in the City's discontinuance of its processing of the request to establish a Restricted Zone and can result in the filing of a lien against the premises of the applicant.

- (6) Once the City Manager or his or her designee is satisfied that the application is complete, the City Manager shall place the matter on the City Council's agenda to set a time, date, and place for a public hearing on the application.
- (7) After the City Council sets the public hearing, the applicant shall cause a written notice of the hearing to be sent by first class mail to all persons having an interest as owner, tenant, easement holder, or mortgagee in any of the affected premises. The notice shall include a brief statement regarding the application designed to inform the recipients of its main features and potential impact on the recipients in general. The notice shall be mailed no less than fifteen (15) days prior to the hearing. The notice of hearing shall also be published in a newspaper of general circulation in the City no less than fifteen (15) days before the hearing. The notice shall also be mailed to the USEPA or MDEQ representative who gave the approval of the proposed Restricted Zone and use regulations and the USEPA or MDEQ district supervisor for the regulatory program with jurisdiction over the contaminated site. A copy of the notice, an affidavit of publication and an affidavit of mailing shall be filed with the City Manager before the hearing.
- (8) Upon the establishment of a new Restricted Zone, the City Clerk shall publish notice of the amendment to this article in the manner required by law for ordinance amendments.

The applicant shall give notice to the owners and occupants of all property on which wells are located of the need to plug and abandon wells under this chapter as amended.

D. WELLS AFFECTING CONTAMINATED GROUNDWATER; WAIVER. No well may be used or installed at any place in the City if the use of the well will have the effect of causing the migration of contaminated groundwater or a contaminated groundwater plume to previously unimpacted groundwater, or adversely impacting any groundwater treatment system, unless the well is part of an MDEQ or USEPA approved groundwater monitoring or remediation system.

If the MDEQ determines that the use of a well is not influenced or potentially influenced by contaminated groundwater and further determines the use of that well will remain permanently unaffected by the future migration of contaminated groundwater, and proof of those determinations is delivered to the City, the City Manager may execute a waiver allowing the use of the well. For example, a well may be installed within a restricted zone in a deep aquifer below a geologic aquitard, provided that the person proposing to install such a well:

- a. Uses well construction techniques (e.g. double casing) that will maintain the integrity of the lower aquifer and prevent the migration of contaminants from the upper aquifer into the lower aquifer; and
- b. Submits to the City Manager, the Van Buren/Cass District Health Department and MDEQ the proposed well construction techniques for review and approval, prior to the installation of the well.

E. NON-CONFORMING WELLS. Any existing well, the use of which is prohibited by this Ordinance, shall, within one hundred eighty (180) days of the effective date hereof, be plugged or abandoned in conformance with all applicable laws, rules, regulations, permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction, or, in the absence of an applicable law, rule, regulation, requirement, order, directive, in conformance with the protocol developed consistent with the American Standards for Testing and Materials standard #D5299-92 and the Applicant shall provide for the abandonment and plugging of all existing wells prohibited by this Ordinance on the affected premises and connect such premises to The City of Dowagiac Public Water Supply, without cost to the owners or occupants of the premises.

F. GENERAL EXCEPTIONS.

1. Construction of De-Watering Wells. Wells in the Restricted Zone used for construction de-watering are not prohibited by this Ordinance, provided that the water generated by that activity is properly handled and disposed in compliance with all applicable laws and regulations and the use of a de-watering well does not result in the unacceptable exposures to contaminated groundwater, possible cross-contamination between saturated zones, or exacerbation of contaminated groundwater. Any exacerbation caused by the use of wells under this exception shall be the responsibility of the person operating the de-watering well, as provided in Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

2. Groundwater Monitoring and Remediation Wells. Wells used for groundwater monitoring and/or remediation as part of response activity approved by the USEPA and/or MDEQ are not prohibited by this ordinance.

3. Water Service Unavailable. If water service is unavailable to a premise in a proposed Restricted Zone, any well on that premises shall be tested annually by a laboratory that is acceptable to and for the parameters specified by the MDEQ. The results of that test shall be promptly submitted to the MDEQ or the Van Buren/Cass District Public Health Department for review. If the MDEQ or the Van Buren/Cass District Public Health Department determines that the well is safe for use, and proof of that determination is provided to the City, that well may be used. No split or conveyance of property shall be effective to render City water service unavailable. For purposes of this provision, City water service is unavailable only if it is impractical from an engineering perspective, to serve the premises with City water. This provision shall apply only to wells existing on the effective date of this Ordinance.

4. A well may be used in the event of a public emergency. Notice of such use shall be provided to the MDEQ within a reasonable time thereafter.

#### G. ENFORCEMENT.

1. Any well in violation of any provision of this Ordinance is hereby declared to be a nuisance per se, subject to abatement and immediately taken out of service and lawfully plugged and abandoned consistent with all applicable rules and regulations. Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with any of the

provisions of this Ordinance shall be guilty of a civil infraction punishable by the sanctions as set forth below.

2. The City Manager or his or her designee, together with law enforcement officers, are authorized officials to issue municipal civil infraction citations and municipal civil infraction violation notices for violation of this Ordinance.

3. Each day that a violation continues may be deemed a separate infraction.

4. The sanction for any violation of this Ordinance which is a municipal civil infraction shall be a civil fine as provided herein, plus any costs, damages, expenses, and other sanctions authorized under Act 12 through 26, Public Acts of Michigan of 1994 and the Code of Ordinances of the City of Dowagiac.

5. Increased civil fines will be imposed for repeated violations that occur within a six (6) month period. Civil fines for first offenses, repeat first offenses and repeat second offenses will be established from time to time by resolution of the City Council.

6. The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.

7. In addition, the City may seek an order from a court of appropriate jurisdiction to obtain equitable relief to restrain any person from violating this Ordinance and to properly and lawfully plug and abandon the well and such other relief as may be available to the City pursuant to Chapter 83 and 87 of the Michigan Remedial Judicate Act, as amended at the present time or in the future, including the collection of costs and actual attorney fees associated with such enforcement action.

H. NOTIFICATION OF INTENT TO AMEND OR REPEAL. At least thirty (30) days prior to adopting a revision or amendment to this Ordinance or prior to its repeal, the City of Dowagiac shall notify the USEPA or MDEQ, or their successor agencies, of its intent to so act.

I. PUBLISHING AND RECORDING. This Ordinance or an amendment to this Ordinance shall be published as follows:

(a) If the release is regulated pursuant to Part 201, then this Ordinance or an amendment to this Ordinance shall be published and maintained in the same manner as zoning Ordinances.

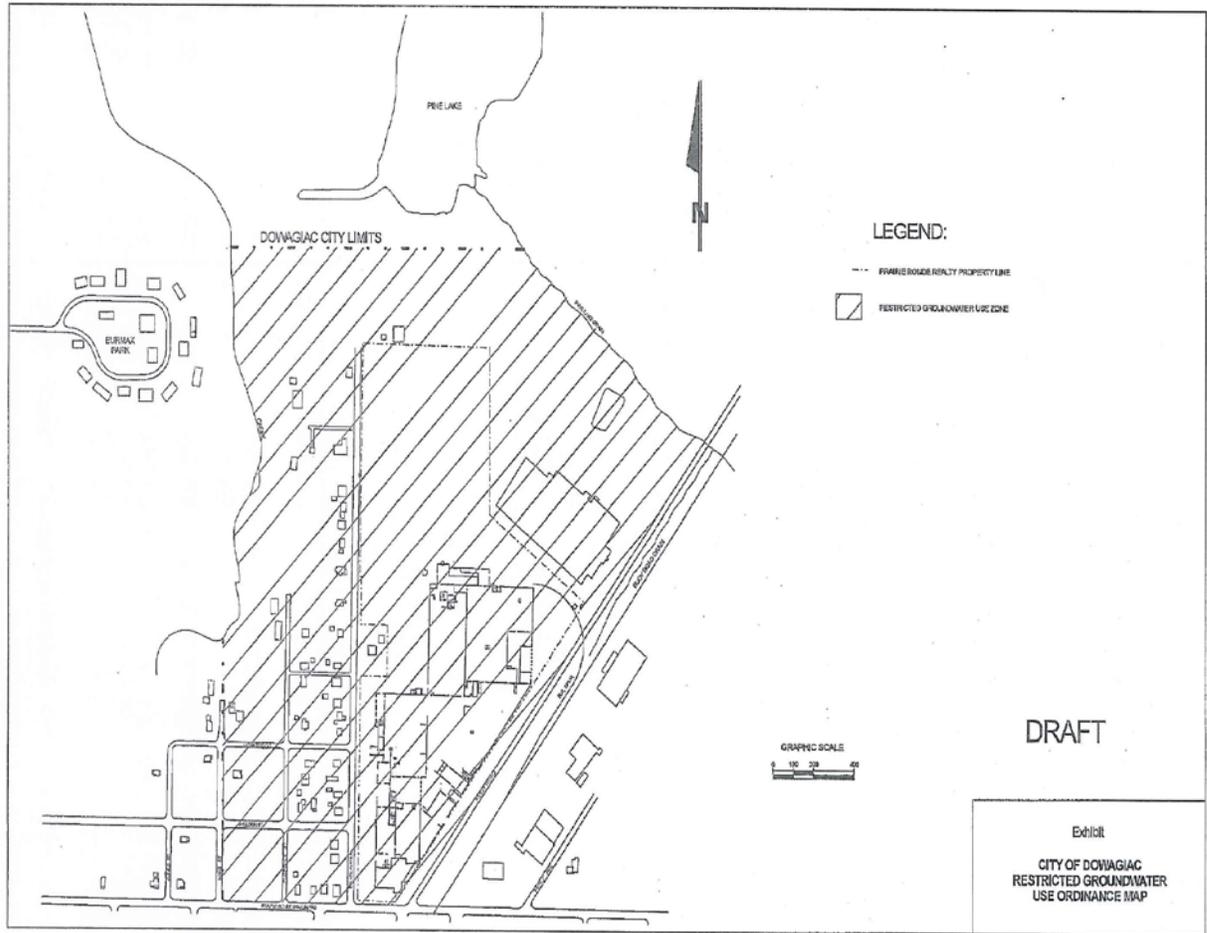
(b) If the release is regulated pursuant to Part 213, then this Ordinance or an amendment to this Ordinance shall be filed with the Cass County Register of Deeds as an Ordinance affecting multiple properties.

J. SAVINGS PROVISION. If any article, section, subsection, sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the Ordinance, it being the intent of the City of Dowagiac that this Ordinance shall be fully severable. The City of Dowagiac shall promptly notify the USEPA or MDEQ upon the occurrence of any event described in this section.



# EXHIBIT A

[ Drawing ]



## **EXHIBIT B**

[ *Narrative Description* ]

### **NARRATIVE DESCRIPTION OF A GROUNDWATER RESTRICTED ZONE IN THE CITY OF DOWAGIAC, CASS COUNTY, MICHIGAN**

OCTOBER 16, 2015  
(PROJECT NO. 154220)

THAT PART OF THE NORTH HALF OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 15 WEST, CITY OF DOWAGIAC, CASS COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF PRAIRIE RONDE STREET AND THE WEST RIGHT OF WAY LINE OF KING STREET; THENCE NORTHERLY ON SAID WEST RIGHT OF WAY LINE AND ON SAID WEST RIGHT OF WAY LINE EXTENDED TO THE SOUTHEASTERLY BANK OF AN UN-NAMED CREEK ALSO KNOWN AS THE KING STREET STORM WATER OUTLET; THENCE NORTHERLY ON SAID SOUTHEASTERLY BANK AND ON THE EASTERLY BANK OF SAID UN-NAMED CREEK TO THE NORTH LINE SAID SECTION 31 AND THE NORTH LINE OF THE DOWAGIAC CITY LIMITS; THENCE EASTERLY ON SAID NORTH LINE TO THE SOUTHWESTERLY TOP OF BANK OF PINE LAKE DRAIN; THENCE SOUTHEASTERLY ON SAID SOUTHWESTERLY TOP OF BANK TO THE NORTHWESTERLY TOP OF BANK OF THE RUDY ROAD DRAIN; THENCE SOUTHWESTERLY ON SAID NORTHWESTERLY TOP OF BANK TO THE NORTH RIGHT OF WAY LINE OF SAID PRAIRIE RONDE STREET; THENCE WESTERLY ON SAID NORTH RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

## EXHIBIT C

[ List of Restricted Zone Parcels by Parcel Identification Number and Address ]

14-160-200-126-05	LOUISE AVE (VACANT)	14-160-200-699-00	305 LOUISE AVE
14-160-200-126-15	504 LOUISE AVE	14-160-200-700-00	FLORENCE ST (VACANT)
14-160-200-126-25	601 LOUISE AVE	14-160-200-701-00	FLORENCE ST (VACANT)
14-160-200-126-31	413 LOUISE AVE	14-160-200-702-00	KING ST (VACANT)
14-160-200-126-35	FLORENCE ST (VACANT)	14-160-200-703-00	KING ST
14-160-200-126-40	404 LOUISE AVE	14-160-200-704-00	FLORENCE ST (VACANT)
14-160-200-656-00	301 E PRAIRIE RONDE ST	14-160-200-705-00	306 FLORENCE ST
14-160-200-657-00	303 E PRAIRIE RONDE ST	14-160-200-706-00	307 LOUISE AVE
14-160-200-658-00	305 E PRAIRIE RONDE ST	14-160-200-709-00	309 LOUISE AVE
14-160-200-659-00	307 E PRAIRIE RONDE ST	14-160-200-710-01	308 FLORENCE ST
14-160-200-660-00	401 E PRAIRIE RONDE ST	14-160-200-711-01	309 FLORENCE ST
14-160-200-661-00	403 E PRAIRIE RONDE ST	14-160-200-713-01	315 FLORENCE ST
14-160-200-662-00	405 E PRAIRIE RONDE ST	14-160-200-715-00	313 FLORENCE ST
14-160-200-663-00	407 E PRAIRIE RONDE ST	14-160-200-717-00	LOUISE AVE
14-160-200-664-00	415 E PRAIRIE RONDE ST	14-160-200-718-00	312 LOUISE AVE
14-160-200-665-00	105 LOUISE AVE	14-160-200-719-00	LOUISE AVE
14-160-200-667-01	106 FLORENCE ST	14-160-200-720-00	313 LOUISE AVE
14-160-200-668-00	105 FLORENCE ST	14-160-200-721-03	312 FLORENCE ST
14-160-200-669-00	106 KING ST	14-160-200-723-02	317 LOUISE AVE
14-160-200-670-00	108 KING ST	14-160-200-726-00	LOUISE AVE
14-160-200-671-00	107 FLORENCE ST	14-160-200-728-51	LOUISE AVE
14-160-200-672-01	404 SHELDON ST	14-160-205-020-00	55210 RUDY RD
14-160-200-674-00	107 LOUISE AVE	14-160-205-021-00	RUDY RD
14-160-200-675-00	203 LOUISE AVE	14-160-300-972-00	415 LOUISE AVE
14-160-200-676-00	201 LOUISE AVE	14-160-300-973-00	409 LOUISE AVE
14-160-200-677-00	403 SHELDON ST	14-160-300-974-00	407 LOUISE AVE
14-160-200-678-00	204 FLORENCE ST	14-160-300-975-00	405 LOUISE AVE
14-160-200-679-00	401 SHELDON ST	14-160-300-976-00	403 LOUISE AVE
14-160-200-680-00	307 SHELDON ST	14-160-300-977-00	401 LOUISE AVE
14-160-200-681-00	305 SHELDON ST	14-160-300-978-00	LOUISE AVE (VACANT)
14-160-200-682-00	303 SHELDON ST	14-160-200-694-00	FLORENCE ST (VACANT)
14-160-200-683-00	301 SHELDON ST	14-160-200-695-00	301 FLORENCE ST
14-160-200-684-00	206 KING ST	14-160-200-696-00	301 MCMASTER ST
14-160-200-685-00	205 FLORENCE ST	14-160-200-697-00	303 LOUISE AVE
14-160-200-686-00	206 FLORENCE ST (VACANT)	14-160-200-698-00	301 LOUISE AVE
14-160-200-687-00	205 LOUISE AVE		
14-160-200-688-00	207 LOUISE AVE		
14-160-200-689-00	302 MCMASTER ST		
14-160-200-690-00	207 FLORENCE ST		
14-160-200-691-00	208 KING ST		
14-160-200-692-00	302 KING ST		
14-160-200-693-00	KING ST (VACANT)		