

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

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

Mayor Pro-Tem Laylin led the Pledge of Allegiance to the flag.

**PRESENT:** Mayor Pro-Tem Leon D. Laylin; Councilmembers Charles K. Burling, James B. Dodd, Lori A. Hunt, Danielle E. Lucas, Bob B. Schuur and City Clerk Jane P. Wilson.

**ABSENT:** Mayor Donald D. Lyons

**STAFF:** City Manager Kevin P. Anderson, Assistant City Manager Rozanne H. Scherr, Public Safety Director Steve Grinnwald

### APPROVAL OF MINUTES OF PREVIOUS MEETING

Councilmember Burling moved and Councilmember Hunt seconded that the minutes of the February 8, 2016 meeting be approved.

APPROVED unanimously.

### COMMENTS FROM THE AUDIENCE (AGENDA)

Robert Mortimore, Sr., resident, asked a question concerning the Charter Amendment. Mayor Pro-tem explained the last item on the agenda was a public forum to address questions and invited Mr. Mortimore to ask his question at that time.

### RESOLUTIONS

1. Resolution to authorize a change in permit fees for the Building Department.

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

**WHEREAS**, the Dowagiac City Code provides that under Chapter 18, Article II, Section 18-29; Dowagiac Zoning Ordinance; Chapter 15, Section 15.5(B); Section 15.9(B), Chapter 21, Section 21.7; Chapter 22, Section 22.2(C), the City Council may set fees for the various permits required by the State Construction Code (including building, electrical, plumbing and mechanical), zoning fees (including ordinance amendments, conditional use permits and variances), and swimming pool permits, and;

**WHEREAS**, the City Administration has prepared the attached proposed fee schedule for review and approval by the City Council.

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Two

**NOW, THEREFORE, BE IT RESOLVED** that the Dowagiac City Council hereby adopts the attached fee schedules to be effective April 1, 2016.

**FEE SCHEDULE FOR BUILDING PERMITS**

*(FEES ARE EFFECTIVE APRIL 1, 2016 THROUGH MARCH 31, 2017)*

TOTAL VALUATION		CURRENT PERMIT FEE	PERMIT FEE
0 -	1,000	\$29.50	<b>\$29.50</b>
1,001 -	1,500	\$38.00	<b>\$38.50</b>
1,501 -	2,000	\$42.75	<b>\$43.00</b>
2,001 -	3,000	\$48.25	<b>\$48.50</b>
3,001 -	4,000	\$56.25	<b>\$56.50</b>
4,001 -	5,000	\$64.00	<b>\$64.50</b>
5,001 -	6,000	\$70.50	<b>\$71.00</b>
6,001 -	7,000	\$75.50	<b>\$76.00</b>
7,001 -	8,000	\$83.75	<b>\$84.50</b>
8,001 -	9,000	\$92.25	<b>\$93.00</b>
9,001 -	10,000	\$98.00	<b>\$98.50</b>
10,001 -	12,000	\$112.75	<b>\$113.50</b>
12,001 -	14,000	\$126.25	<b>\$127.00</b>
14,001 -	16,000	\$141.50	<b>\$142.50</b>
16,001 -	18,000	\$153.75	<b>\$155.00</b>
18,001 -	20,000	\$169.00	<b>\$170.00</b>
20,001 -	25,000	\$198.50	<b>\$200.00</b>
25,001 -	30,000	\$230.50	<b>\$232.00</b>
30,001 -	35,000	\$267.00	<b>\$269.00</b>
35,001 -	40,000	\$304.50	<b>\$306.50</b>
40,001 -	45,000	\$336.00	<b>\$338.50</b>
45,001 -	50,000	\$439.50	<b>\$442.50</b>
50,001 -	60,000	\$490.25	<b>\$493.50</b>
60,001 -	70,000	\$541.00	<b>\$545.00</b>
70,001 -	80,000	\$587.25	<b>\$591.50</b>
80,001 -	90,000	\$644.00	<b>\$648.50</b>
90,001 -	100,000	\$696.75	<b>\$701.50</b>
100,001 -	500,000	\$696.75 + \$4.50 / 1,000	<b>\$701.50 + \$4.50 / 1,000</b>
500,001 -	1,000,000	\$2,496.75 + \$4.25 / 1,000	<b>\$2,514.25 + \$4.25 / 1,000</b>
1,000,000 +		\$4,621.75 + \$4.00 / 1,000	<b>\$4,654.00 + \$4.00 / 1,000</b>

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Three

*Any person who commences any alteration, addition or new structure for which a permit is required by these regulations without first obtaining a permit, therefore, shall, if legally authorized and subsequently allowed to obtain a permit, pay a special inspection fee of \$44.00, in addition to the actual permit fee.*

ADOPTED unanimously.

2. Resolution authorizing the Cass County Drain Commissioner to expend money to maintain and repair the California Drain.

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

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Four

Res. #2  
February, 22, 2016

STATE OF MICHIGAN

COUNTY OF CASS

CITY OF DOWAGIAC

**RESOLUTION**

**WHEREAS**, the Cass County Drain Commissioner has advised the City Manager for the City of Dowagiac that, pursuant to Section 196 of the Michigan Drain Code (MCL 280.196; MSA 11.1196), an inspection has been made of the **California Drain** and it has been determined, as a result of the inspection, that certain maintenance must be performed upon the Drain; and,

**WHEREAS**, the Cass County Drain Commissioner has the authority to expend Five Thousand and no/100 (\$5,000.00) Dollars per mile in any one (1) year for the maintenance of the drain, and where it is estimated that expenditures in excess of Five Thousand no/100 (\$5,000.00) Dollars per mile are necessary, those amounts may not be expended until approved by Resolution of the governing body of each township, city and village affected by more than twenty (20%) percent of the cost; and,

**WHEREAS**, the Cass County Drain Commissioner has advised the City Manager for the City of Dowagiac that it will be necessary to expend funds in excess of Five Thousand and no/100 (\$5,000.00) Dollars per mile for the maintenance of the California Drain and that the City of Dowagiac is affected by more than twenty (20%) percent of the cost; and,

**WHEREAS**, the Cass County Drain Commissioner estimates that the cost for the maintenance of the California Drain will be approximately 9,000 Dollars, which constitutes 4,000~~X~~ Dollars in excess of the authorized Five Thousand and no/100 (5,000.00) Dollars per mile.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the \_\_\_\_\_ for the City of Dowagiac, that pursuant to Section 196 of the Drain Code, the Cass County Drain Commissioner is authorized to expend money for the maintenance and repair of the **California Drain** in excess of Five Thousand and no/100 (\$5,000.00) Dollars per mile and, to the extent that the drain fund for the California Drain contains insufficient funds for the payment of costs incurred for the maintenance or repair of the California Drain, then the Cass County Drain Commissioner is authorized to levy a special assessment, as allowed by law.

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Five

*RESOLUTION* approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the City of Dowagiac.

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

I, the undersigned, being the duly qualified and acting Clerk of the County of Cass, City of Dowagiac, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the \_\_\_\_\_ of the City of Dowagiac at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

\_\_\_\_\_  
City of Dowagiac Clerk

# DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Six

## **DRAINAGE EASEMENT**

IN CONSIDERATION OF LESS THAN ONE HUNDRED DOLLARS (\$100.00), The City of Dowagiac (hereafter referred to as the "Grantor"), conveys and releases to California Drain Drainage District, whose address is 120 N Broadway St # 219, Cassopolis, MI 49031 (hereafter referred to as the "District"), an irrevocable easement and right-of-way in which to construct, maintain, repair, replace, and/or remove drains, over, across, under and through the following parcel of land situated in the City of Dowagiac, Cass County, Michigan, and legally described as follows: **See attached Exhibit (A)**

COM AT A PT ON W LN SEC N 0 DEG 51'43"W 1710.72 FT & S 89 DEG 29'1"W FRM E 1/4 COR, TH S TO W 1/4 COR, E TO E 1/4 COR, N O DEG 51'43"W 1710.72 FT, S 89 DEG 29'1"W TO A PT 70 FT E OF W LN E 1/2 NW 1/4 NE 1/4, TH N TO SEC LN, W 70 FT, S TO PT N 89 DEG 29'1"E OF BEG, S 89 DEG 29'1"W TO N & S 1/4 LN, N TO N 1/4 COR, W TO PT S 89 DEG 34'15"E 1712.65 FT FRM NW COR SEC, S 0 DEG 9'35"E 300 FT, N 89 DEG 34'15"W 400 FT, S 0 DEG 9'35"E TO PT N 89 DEG 29'1"E OF BEG, S 89 DEG 29'1"W TO BEG. SEC 35 UNPLATTED SILVER CREEK TWP CITY OF DOWAGIAC 230 A.

(hereafter referred to as the Parent Parcel), the easement and right-of-way to be located as follows;

A 30 FOOT WIDTH OF LAND CONTIGUOUS TO THE N-S 1/4 LINE ON THE WEST SIDE OF SAID N-S 1/4 LINE AND NORTH OF THE SOUTH PROPERTY LINE OF THE CONTIGUOUS PARCEL EAST OF N-S 1/4 LINE.

A 60 FOOT WIDE DRAINAGE EASEMENT CENTERED ON THE N - S 1/4 LINE BEGINNING AT THE SOUTH LINE OF PP# 14-130-035-005-00 SOUTH TO A POINT ON THE N - S 1/4 LINE 2331 FEET SOUTH OF NORTH 1/4 CORNER; THENCE N88°08'38"W 850.1 FEET; THENCE S42°44'00"W 216.1 FEET. **See attached Exhibit A**

The conditions of this easement are such that:

1. The District's rights and obligations are limited to the maintenance, repair, and replacement of the drainage facilities, in accordance with the provisions of the Drain Code. The cost of which may be assessed to the benefiting properties within the California Drain Drainage District.
2. The Grantor shall retain all other property rights and obligations. No buildings, construction, or decorative landscaping of any kind or nature shall be placed within the easement and right-of-way described above.
3. By this conveyance the Grantor releases the District from any and all claims for damage arising from or incidental to the exercise of any of the foregoing powers.

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016  
Page Seven

This Grant of Easement is intended to run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, and may not be amended or modified without prior written approval of the District. Any amendment or modification to this Grant of Easement shall be by an instrument in recordable form executed by both the Grantor and the District and recorded at the office of the Cass County Register of Deeds.

Exempt pursuant to: MCL 201.505(a) and MCL 201.526(a).

**CALIFORNIA DRAIN DRAINAGE DISTRICT**

Dated: \_\_\_\_\_

By: Bruce Campbell, Drain Commissioner

**GRANTOR:**

Resolution Number: \_\_\_\_\_

**CITY OF DOWAGIAC**

Dated: \_\_\_\_\_

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF CASS        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

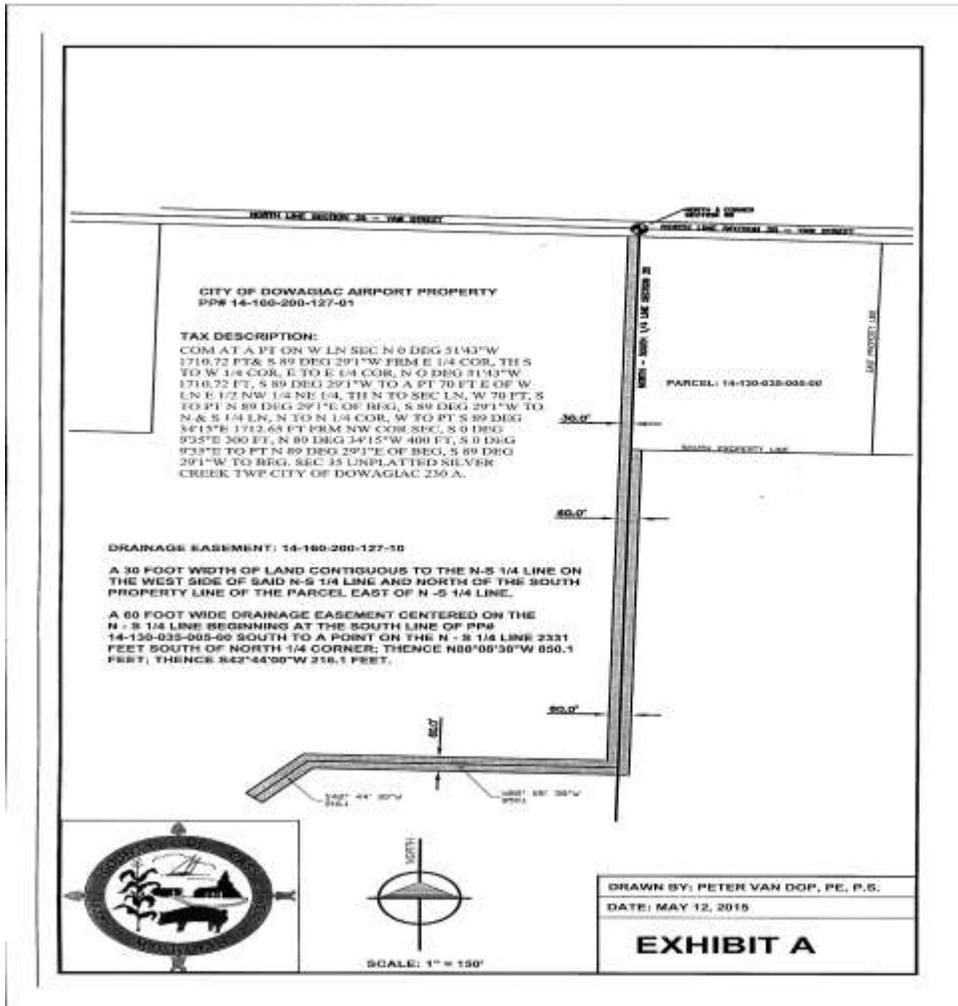
\_\_\_\_\_  
Notary Public  
State of Michigan, County of Cass  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Cass

Prepared by:           Peter Van Dop, P.E.        
  Engineer/Chief Deputy

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Eight



ADOPTED unanimously.

3. Resolution of intent to borrow for various capital improvement projects in the City of Dowagiac.

Councilmember Hunt offered and moved the adoption of the following resolution; seconded by Councilmember Lucas.

WHEREAS, the City Council desires to enter into an Agreement for Professional Engineering Services relative to improvements on the Division Street corridor.

WHEREAS, the engineering firm of Whiteman & Associates, and;

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016  
Page Nine

NOW, THEREFORE BE IT RESOLVED that the Mayor be and hereby is authorized to execute any and all documents necessary and appropriate to effectuate said agreement.

**CITY COUNCIL  
CITY OF DOWAGIAC  
(Cass County, Michigan)**

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

**RESOLUTION TO PURCHASE, ACQUIRE AND CONSTRUCT  
CAPITAL IMPROVEMENTS WITHIN THE CITY AND TO PUBLISH  
NOTICE OF INTENT TO ISSUE MUNICIPAL SECURITIES**

Minutes of a regular meeting of the City Council of the City of Dowagiac, Cass County, Michigan, held in the Municipal Building, 241 S. Front Street, Dowagiac, Michigan, on February 22, 2016, at 7:00 p.m. local time.

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

The following resolution was offered by Member \_\_\_\_\_ and supported by Member \_\_\_\_\_:

WHEREAS, the City Council deems it to be in the best interest of City of Dowagiac (the "City") to purchase and acquire property and property interests and to design, acquire, install, and construct capital improvements including, but not limited to, public facilities along the Division Street corridor, the demolition of existing structures and facilities; construction of parking and parking lots; relocation and improvement of public utilities, including water, electric, sanitary sewer and storm sewer; realignment and improvement of streets and roads, landscaping and streetscape improvements; the construction and improvement of park and park facilities; the restoration of streets; rights of way and easements, together with all related work, facilities, site work and appurtenances (the "Improvements") for the benefit of the City and to finance the Improvements by the issuance of municipal securities which pledge the City's limited tax general obligation pursuant to Section 517 of Act 34 of the Public Acts of Michigan of 2001, as amended ("Act 34"); and

WHEREAS, the City may proceed with the Improvements prior to the issuance of the municipal securities; and

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Ten

WHEREAS, the City may incur substantial capital expenditures for the Improvements prior to the issuance of the municipal securities and desires to be reimbursed for such expenditures from the proceeds of the municipal securities; and

WHEREAS, pursuant to Section 517 of Act 34, it is necessary to publish a Notice of Intent to Issue Municipal Securities for the Improvements.

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council hereby determines to purchase, design, acquire, and construct the Improvements and to pay for the cost through the issuance of one or more series of municipal securities, which pledge the City's limited tax full faith and credit, pursuant to Section 517 of Act 34, in an amount of not to exceed \$2,200,000 (the "Municipal Securities").

2. A Notice of Intent to Issue Municipal Securities be published in accordance with Section 517 of Act 34, and the City Clerk is authorized and directed to publish the Notice of Intent to Issue Municipal Securities in the *Dowagiac Daily News*, a newspaper of general circulation in the City, determined to be the newspaper reaching the largest number of persons to whom such Notice is directed, which Notice shall be substantially in the form as set forth on Exhibit A attached hereto with such changes as are approved by the City Manager, and shall be at least one-quarter (1/4) page size in the newspaper.

3. The City may proceed to acquire and construct the Improvements using available funds of the City from the general fund, a fund for the general operations of the City, and other funds of the City.

4. At such time as the City issues the Municipal Securities for the long-term financing of the Improvements, the City shall be reimbursed for its expenditures for the Improvements out of the proceeds of the Municipal Securities.

5. This resolution and the expression of intent to seek reimbursement from future proceeds of the Municipal Securities is intended to satisfy the requirements of Section 150 of the Internal Revenue Code of 1986, as amended.

6. The firm of Dickinson Wright PLLC is hereby employed as bond counsel to the City to prepare the documents for the issuance of the Municipal Securities for the financing of the acquisition of the Improvements.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same are hereby rescinded.

ADOPTED unanimously.

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Eleven

4. Resolution to authorize design and construction services proposal from Wightman & Associates for the Corridor Improvement Project.

WHEREAS, the City Council desires to enter into an Agreement for Professional Engineering Services relative to improvements along the Division Street Corridor, and;

WHEREAS, the engineering firm of Wightman & Associates have been assisting the city with the development of conceptual plans and estimates of costs for improvements to the Division Street Corridor, and;

WHEREAS, Wightman & Associates has provided a proposal for design and construction of improvements to the Division Street Corridor, and;

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 proposal dated February 4, 2016.

ADOPTED unanimously.

### GENERAL SERVICES AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

This Agreement is made as of \_\_\_\_\_, 2015, between the City of Dowagiac, a Michigan municipal corporation, P.O. Box 430, 241 South Front Street, Dowagiac, Michigan, 49047 (the "City") and Wightman and Associates, Inc., a professional corporation, 2303 Pipestone Road, Benton Harbor, Michigan, 49022 (the Consultant).

### RECITALS

- A. The City has need for engineering services to be provided for City projects and to perform associated duties as required from time-to-time by the City Council of the City.
- B. The Consultant desires to provide engineering services in accordance with the terms and conditions set forth in this Agreement.
- C. The City desires to have the Consultant perform engineering services in accordance with the terms and conditions set forth in this Agreement

### TERMS AND CONDITIONS

1. Scope of Services. Consultant shall perform the full range of municipal consulting activities involving Engineering, Architectural and Surveying services, including planning for large scale municipal projects, feasibility studies, applications to apply for State or Federal funding, right-of-way acquisition services, building programming and design, design and construction engineering, and related boundary and topographical surveys for numerous utility, road, bridge and building projects. Consultant will provide professional services for the City in connection with the above type projects and any others assigned to it

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Twelve

by the City and will perform such services as expeditiously as is consistent with professional skill and care in the orderly progress of the work required by the project.

2. Method of Authorization. The City may authorize the Consultant to proceed with work on a case-by-case basis, either by signing a work authorization or by issuance of an acknowledgment, confirmation, purchase order or other written communication.

a. Regardless of the method used to authorize the work, the terms and conditions of this Agreement shall govern the work to be done by the Consultant unless another arrangement is made in writing between the parties (i.e., as in the case of work quoted by the Consultant on a flat fee, rather than hourly rate basis).

b. Only the City Manager or his/her designee(s) may authorize the Consultant to do work under this Agreement.

3. Contract Duration. The contract period for the proposed scope of services shall be indefinite, but not to exceed five (5) years. At such time, the City and the Consultant can enter into negotiations to extend or revise the contract.

4. Engineer's Responsibilities. Upon request by the City, the Consultant shall submit a proposed plan for a particular project at no cost to the City, including but not limited to the project purpose, the scope of services to be provided, a proposed time schedule for completion of services, and a not to-exceed budget.

5. Engineer's Staffing. In entering into this agreement, the Consultant is representing that it has sufficient qualified staff to perform the services as described.

6. City Responsibilities. The City shall provide all criteria and full information as to its requirements for any particular project. Unless another party is designated by action of the City Council, the City Manager is the person with authority to act on the City's behalf on all matters concerning a project. If the Consultant's services under a work authorization do not include full-time construction observation or review of a contractor's performance, the City shall assume responsibility for interpretation of contract documents and for construction observation.

7. Hourly Billing Rates. Unless stipulated otherwise, the City shall compensate the Consultant at hourly billing rates for services provided by the Consultant's employees of various classifications, less a five percent (5%) reduction. The hourly rates which are applicable to work done under this Agreement are determined by a rate schedule, a copy of which is attached, that is subject to change on an annual basis. The Consultant shall submit to the City Manager a revised hourly billing rate schedule prior to changing any billing rates. Hourly billing rates will not change during projects authorized prior to a rate change.

8. Not-to-Exceed Estimates. Most projects will be based on not-to-exceed estimates. This method allows for hourly billing for all time and materials at a predetermined not-to-exceed amount. Charges may not exceed estimate without permission as detailed in section 17 below.

9. Reimbursable Expenses. Costs incurred on or directly for City projects (such as mileage for vehicles, laboratory tests and analyses, computer services, special equipment services, postage and delivery charges, copying, printing, and binding charges) shall be reimbursed by the City to the Consultant at the rates shown on the then current rate schedule. Reimbursement and outside technical or professional services shall be on the basis of actual costs to the Consultant plus ten percent (10%). The Consultant shall submit to the City Manager a revised reimbursable expense billing rate schedule prior to changing any rates.

Reimbursable expense billing rates will not change during projects authorized prior to a rate change.

10. Opinions of Cost. Any opinions of probable construction cost and/or total project cost provided by the Consultant will be on a basis of experience and judgment, but since the Consultant has no control over market conditions or bidding procedures, the Consultant cannot warrant that bids or ultimate construction

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Thirteen

or total project costs will not vary from such estimates. Opinions of costs shall be clearly marked as “conceptual, preliminary, and final” or as is otherwise appropriate.

11. Professional Standards: Warranty. The standard of care for services performed or furnished by the Consultant will be the care and skill ordinarily used by members of the Consultant’s profession practicing under similar circumstances at the same time and in the same locality. Except as provided in the preceding sentence, the Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Consultant’s services.

12. Termination. Either the City or the Consultant may terminate this Agreement by giving ninety (90) days written notice to the other party. In such event, the City shall, within thirty (30) days, pay the Consultant for all work authorized and performed prior to the effective date of termination. Upon termination, the Consultant will return to the City all documents and information which are the City’s property. (See Item No. 16.)

13. Subcontractors. Subject to prior approval by the City, the Consultant may engage subcontractors on behalf of the City to perform portions of the services to be provided by the Consultant under this Agreement.

14. Payment to the Consultant. The Consultant shall issue invoices to the City on a monthly basis, which invoices shall be payable upon receipt, unless otherwise agreed. Formatting of the invoices will be determined on a project by project basis depending upon the authorization (hourly, flat, fee, and etc.).

a. The City agrees to pay on a current basis, in addition to any proposal or contract fee understandings, all taxes including, but not limited to, sales taxes on services or related expenses which may be imposed on the Consultant by any governmental entity.

b. If the City directs the Consultant to invoice another, the Consultant will do so, but the City agrees to be ultimately responsible for the Consultant’s compensation until the City provides the Consultant with that third party’s written acceptance of all terms of this Agreement and until the Consultant agrees to the substitution.

c. In addition to any other remedies the Consultant may have, the Consultant shall have the absolute right to cease performing any basic or additional services in the event payment has not been made on a current basis.

15. Hazardous Waste. The Consultant has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at any site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposure to such substances or conditions. The Consultant shall not be responsible for any alleged contamination, whether such contamination occurred in the past, is occurring presently, or will occur in the future, and the performance of services hereunder does not imply risk-sharing on the part of the Consultant.

16. Insurance. During the term of this Agreement, the Consultant shall maintain professional liability insurance with coverage of not less than \$2,000,000 per occurrence.

a. During the term of this Agreement, the City shall provide workers’ compensation insurance for the City’s employees.

b. Upon request, the City and the Consultant shall each deliver to the other certificates of insurance evidencing their coverages.

c. Any contract documents prepared by the Consultant shall require contractors to purchase and maintain commercial general liability and to cause the City, its officers and employees, to be listed as insureds or additional insureds and certificate holders. The Consultant may also require that contractors list the Consultant and its sub-consultants, employees and agents as additional insureds.

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Fourteen

17. Consequential Damages. The City and the Consultant waive consequential damages for claims, disputes, or other matters in question relating to this Agreement including, but not limited to, loss of business.

18. Legal Expenses. If either the City or the Consultant makes a claim against the other as to issues arising out of the performance of this Agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney's fees.

19. Ownership of Work Product. The City shall remain the owner of all drawings, reports and other material provided by the Consultant, whether in hard copy or magnetic media form. Any other use or reuse by the City or others for any purpose whatsoever shall be at the City's risk and full legal responsibility, without liability to the Consultant.

20. Default Provisions. In case of default by the Consultant, the City may procure the services from other sources and hold the Consultant responsible for any excess costs occasioned thereby.

21. Electronic Media. Computer files of text, data, and graphics or of other types on electronic media that are furnished to the City by the Consultant for data, reports, drawings, specifications and other material may be relied upon by the City.

22. Indemnification. The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold the City, its officers and agents harmless from any claim, damage, liability, or cost (including reasonable attorneys' fees) to the extent caused by or arising from the Consultant's gross negligence or willful misconduct in the performance of services under this Agreement. The City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any claim, damage, liability, or cost (including reasonable attorneys' fees) to the extent caused by or arising from the City's gross negligence or willful misconduct in the performance of its obligations under this Agreement.

23. General Considerations. This Agreement shall bind the City and the Consultant and their respective successors and assigns with respect to the covenants, agreements and obligations contained in this Agreement.

a. Neither the City nor the Consultant shall assign this Agreement or delegate the obligations contained in this Agreement without the written consent of the other.

b. Neither the City nor the Consultant will have any liability for non-performance caused in whole or in part by causes beyond the parties' reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.

c. This Agreement shall be governed by the laws of the State of Michigan and all legal actions shall be brought in Cass County.

d. This Agreement constitutes the entire agreement between the City and the Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

CITY OF DOWAGIAC

By:

Donald D. Lyons, Mayor

By:

Kevin Anderson, City Manager

WIGHTMAN AND ASSOCIATES, INC.

By:

Matt A. Davis, President

By:

Steve Carlisle, Chairman

DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016  
Page Fifteen

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

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

**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 #11 for the period ending 02/18/16:

Invoices	\$531,230.27
Payroll #11	<u>\$199,771.80</u>
Total	\$731,002.67

**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>
\$531,230.27	\$199,771.80	\$731,002.67

ADOPTED on a roll call vote.

Ayes: Four (4) Burling, Dodd, Hunt, Lucas

Nays: None (0)

Absent: One (1) Schuur

Abstain: None (0)

**PUBLIC FORUM TO RECEIVE QUESTIONS AND DISCUSS THE PROPOSED CHARTER AMENDMENT THAT IS ON THE MARCH 8, 2016 BALLOT.**

City Manager Kevin Anderson cited several of the reasons identified in the attached documents, entitled "Information Flyer" and "Questions about Ballot Issue." He offered as examples the provisions enabling the City to establish an Electric Facilities Board, and appoint Justices of the Peace, noting that the Charter has not been amended since its adoption. He pointed out that the City no longer generates electricity, so there's no longer a need for the Electric Facilities Board and since Justices of the Peace are no longer recognized by the State, there's no reason for that provision to remain in the City's Charter.

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Sixteen

Leon Anderson, Jr., Chair of the Local Officers' Compensation Commission (LOCC), referred the Council to a discussion in which the Commission, in recommending an hourly rate for the City Clerk's position following James Snow's retirement, indicated they did not believe the Council had the authority to either specify or limit the Clerk's hours, and reminded them no discussion of the proposed Charter amendment took place at that time.

City Manager Anderson acknowledged, but did not respond when Leon Anderson mentioned a statement published in the Leader and attributed to Anderson, to the effect that the decision to amend the Charter was based on the recommendation of the LOCC. (That issue is addressed in "Questions about Ballot Issue.")

City Manager Anderson reiterated some of the reasons set forth in the "Information Flyer" and "Questions about Ballot Issue," citing loss of "tax and state shared revenue," and stated his belief that the time required to fulfill the Clerk's responsibilities no longer justified a full-time clerk and full-time deputy, citing technological improvements that have rendered many of the Clerk's duties obsolete.

Mayor Pro-tem Laylin added, "we specified we want the clerk to work 5 half days or 3 full days, because we don't want to pay a full-time salary for part-time work."

Leon Anderson stated a similar proposal was voted against several years ago. He argued the Clerk's position was purposely created as an elected position, in order to insure the Clerk's independence from the Council, thereby creating a check and balance system, which would be eliminated entirely if the Clerk was appointed by the City Manager or Council.

He pointed out that some of the duties set forth in the Charter had already been assumed by the City Manager or his appointee, although the Charter provision delineating the Clerk's responsibilities and authority had not been amended, and noted that the election process has changed considerably since the Charter was adopted, increasing the Clerk's accountability to the Secretary of State as well as the local electorate. He added his observation as an election inspector that the Clerk's role as the election administrator has become significantly more sophisticated and those responsibilities have actually increased, as the result of the enlargement and diversification of local clerks' duties under the authority of the Secretary of State.

Council member Hunt noted the provisions in the Charter that set forth the Clerk's duties and Council member Burling acknowledged and apologized for having been unaware some of the Clerk's responsibilities had changed since the Charter was adopted.

Leon Anderson expressed his concern the council believed the voters were incapable of choosing a competent clerk, or treasurer, reiterating that many voters prefer those who hold public office to be accountable to them, rather holding appointed positions.

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Seventeen

He referred to the other potential proposals identified in the Information Flyer, noting the cost of advancing each proposal, particularly if they're addressed at separate elections. Mayor Pro-tem Laylin explained the council's decision was based on the concern that multiple proposals on one ballot were more likely to be defeated.

Diane Barrett-Curtis asked if the appointed clerk (should the proposal pass) would be eligible for benefits provided full-time City employees, such as health insurance and MERS.

City Manager Anderson replied that since the skill sets of available personnel provide the ability to combine responsibilities, it wouldn't be necessary to hire a replacement at the end of the Clerk's term. He noted the section in the Questions about Ballot Issue document, which indicates "it is not anticipated that the Clerk position will be full-time in the foreseeable future."

Barrett-Curtis asked why the Council hadn't solicited the community's input on redrafting the Charter as a whole, rather than placing specific proposals on the ballot individually.

Mayor Pro-tem Laylin stated the decision was made to address the changes one at a time, although some may be combined in future proposals.

Councilmember Burling indicated the proposal is a way to obtain the community's input.

Barrett-Curtis expressed the sentiment that community involvement in advance of placing a proposal on the ballot would have been beneficial.

Karen Judd stated she was "appalled the charter hasn't been amended in 40 years," and expressed her belief the decision should be made by the Council, or by the City Manager and approved by the Council. She cited the statistic that 80% of the communities in the State have decided to appoint their Clerks, and commented that 90% of voters haven't read the charter, adding that schools and colleges don't elect their employees. She suggested two to three proposals should be placed on the ballot in future elections.

Suellen Gause asked whether this would be a permanent change.

City Manager Anderson replied that it would be, until there was another vote on this issue.

Mayor Pro-tem Laylin added that voters can petition for a change to the charter at any time.

Councilmember Burling commented that James Snow performed many services to the community that weren't required by the Charter.

## DOWAGIAC CITY COUNCIL MEETING

Monday, February 22, 2016

Page Eighteen

Teri Frantz asked why the reclassification of the Clerk's position was chosen to be the first provision to be changed.

City Manager Anderson indicated the reassignment of duties would be made at the time the Clerk's position became vacant.

Councilmember Burling added that the current clerk would remain in office until the end of the term, in November of 2019.

Council member Hunt expressed her gratitude to those who appeared and participated in the forum.

### ADJOURNMENT

Upon motion by Councilmember Dodd and seconded by Councilmember Laylin, the Dowagiac City Council adjourned at 8:13 PM.

---

Leon D. Laylin, Mayor Pro-Tem

---

Jane P. Wilson, City Clerk