

AGENDA
CITY OF CHARLEVOIX CITY COUNCIL MEETING

Monday, November 5, 2012 - 7:00 p.m.
210 State St, City Hall, Second Floor City Council Chambers, Charlevoix, MI

- I. Invocation or Pledge of Allegiance**
- II. Roll Call of Members Present**
- III. Inquiry Regarding Possible Conflicts of Interest**
- IV. Consent Agenda**
 - A. City Council Meeting Minutes – October 15, 2012 Regular Meeting **PG 1-6**
 - B. Accounts Payable Check Register **PG 7-13**
 - C. Payroll Check Register **PG 14-16**
- V. Public Hearings**
- VI. Reports**
- VII. Requests, Petitions and Communications and Actions Thereon**
 - A. Project 2012-06ADP, Minor Development Plan Amendment **PG 17-22**
 - B. Consideration to Approve a Grant of Revocable License Agreement for Landscaping Improvements at the Intersection of Dixon Avenue and Mercer Boulevard **PG 23-30**
 - C. Consideration to Renew Docking Lease with Keweenaw Excursions, Inc. **PG 31-36**
 - D. Consideration of Indemnification and Limited Agreement with Fresh Air Aviation **PG 37-40**
 - E. Consideration to Approve Engineering Proposal from Performance Engineers **PG 41-48**
- VIII. Introduction and Initial Actions Relating to Ordinances or to Resolutions That Require Publication or Hearings Prior to Final or Further Action**
- IX. Resolutions**
- X. Ordinances**
- XI. Miscellaneous Business**
- XII. Closed Session**
- XIII. Closed Session**
 - A. Pending Litigation
- XIV. Reconvene, Action to be Taken if Appropriate**
- XV. Adjourn**

The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Project 2012-06ADP. Minor Development Plan Amendment

Kurt Schnelz, 801 Bridge Street

DATE: November 5, 2012

PRESENTED BY: Mike Spencer, City Planner

- EXHIBITS:**
1. Application and original site plan.
 2. Rear elevation drawing.
 3. Photo of subject property.

BACKGROUND INFORMATION:

The structure at 801 Bridge Street is a mixed use development containing professional offices on the first floor and a single family dwelling unit on the second floor. This development was originally approved by the City on May 20, 2002. The second floor on west side (rear) of the building has an open, walk-out area that the applicant would like to cover with a roof. This walk-out area would be covered but not enclosed. Technically since the applicant is building up on the west side of the structure this project requires City review, however this does qualify as a minor development plan amendment based on Section 5.188 (6)(a).

Since the applicant is submitting an amended minor development plan that will continue to meet all of the standards of the zoning ordinance, the building ground coverage and overall (peak) height is not being increased, and nothing proposed is contrary to any conditions imposed in the original approval this proposal qualifies as a minor amendment. Therefore the City Council may approve this minor amendment as part of its routine business at any regular meeting.

RECOMMENDATION:

Staff recommendation is approval without conditions.

Motion that based on the evidence of record including all documentation from case 2002-06DP, all documentation submitted for this case, and exhibits 1 thru 3, Case #2012-06 ADP is hereby approved based on the following findings of fact:

1. The proposed development plan meets all of the specific standards of the current zoning ordinance.

2. The proposed development plan does not increase the building ground coverage or overall building height.
3. The proposed development plan is not contrary to any specific conditions imposed as part of the original approval.

CITY OF CHARLEVOIX

MINOR DEVELOPMENT PLAN APPLICATION

APPLICATION FEE \$275.00

MRS 1.408067
Fee Received By

Subject Property Address 801 Bridge Street

Subject Property Lot Number and Subdivision Lot 6 & Part of Lot 7,
Blk 3 of Mason's Addition to the City of Charlevoix
(if metes and bounds, attach description)

Proposed Use Single Family + Office

Present Zoning Commercial C-1

Property Owned By Kurt E. Schnelz

Address 280 North Old Woodward, Suite 250

Phone Number 231-547-2501 Birmingham, MI 48009

If applicant is other than owner, state nature of applicant's interest

Architectural Designer - Jodi Alger - Home Planning & Design

I (we) the undersigned, do hereby make application to the City of Charlevoix for approval of the attached Development Plan which has been drawn in accordance with the Charlevoix City Code Sections 5.188, 5.201 - 5.210, 5.211 - 5.215.

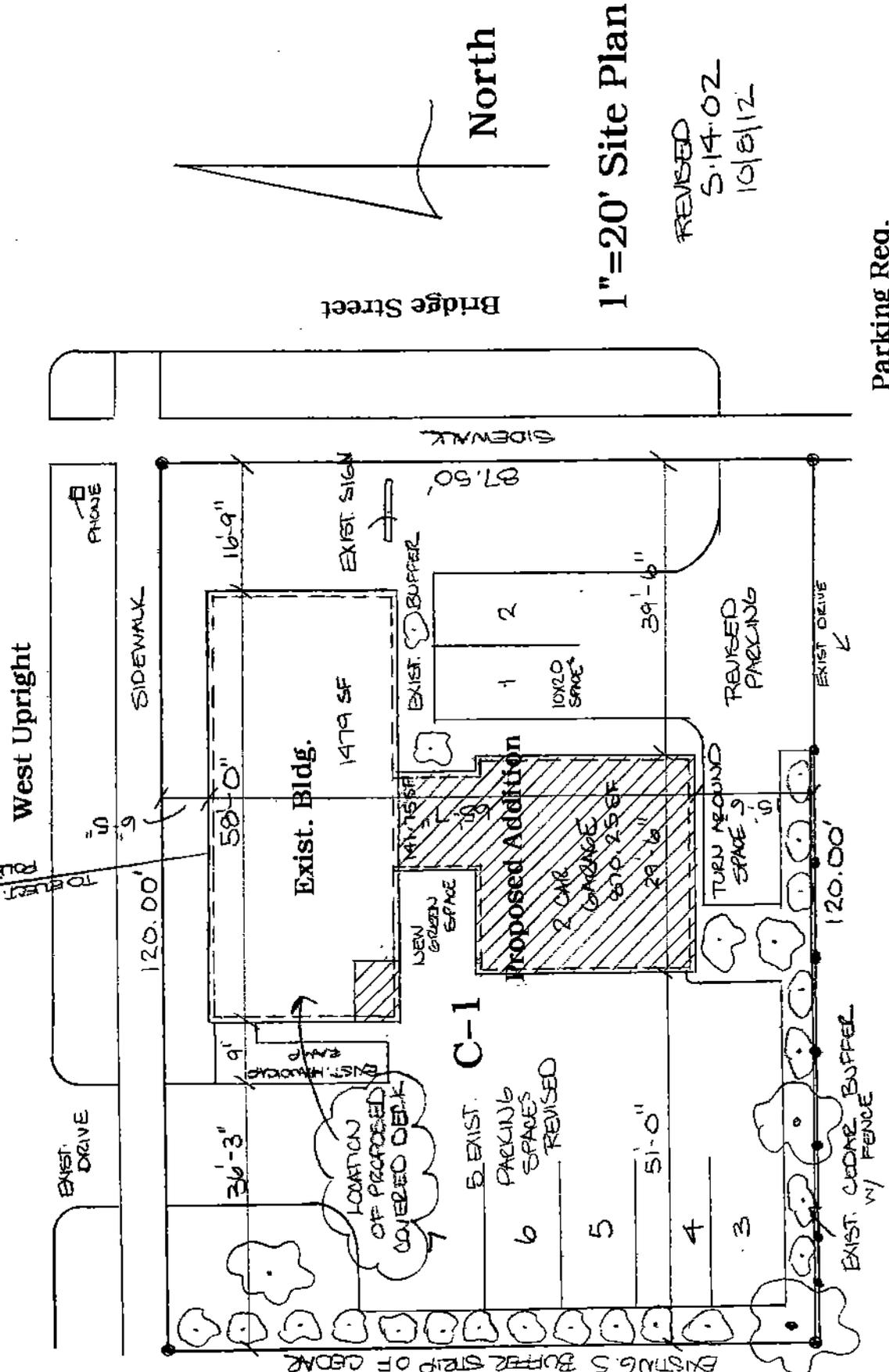
Jodi Alger
Signature of Applicant

10/9/12
Date

121 Anthim St Charlevoix
Address

231-547-4040
Phone Number

Professional Office/Residence 801 Bridge Street



R-2

1"=20' Site Plan

REVISED
5.14.02
10/8/12

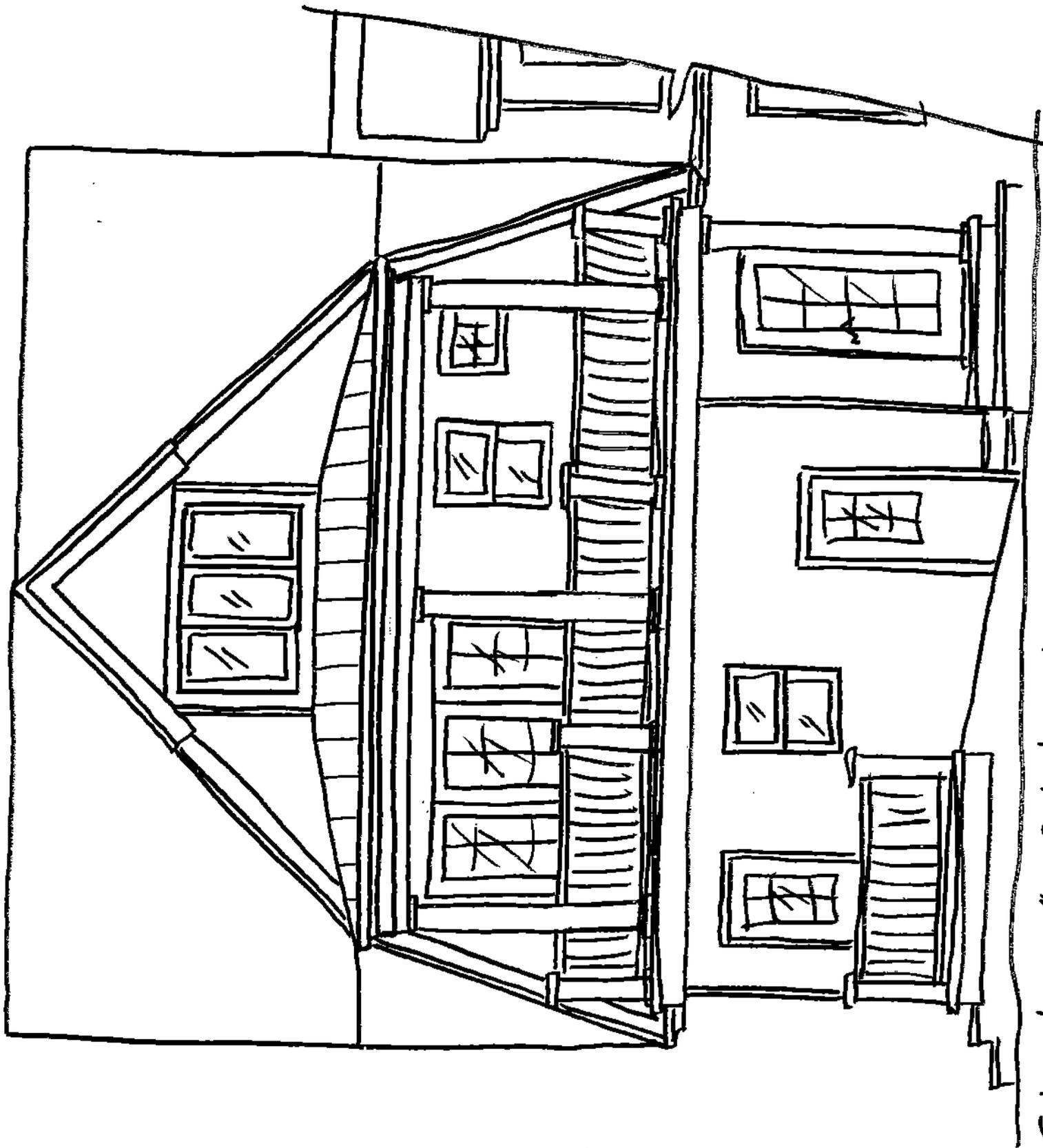
Parking Req.
OFFICE SPACE 504 SF 2 1/2 SPACES
UPPER 2 FLOORS PRESIDENTIAL 2 SPACES
5 SPACES

C-1

Legal Description:

LOT 6 & PART OF LOT 7,
BLK 3 OF MASON'S ADDITION
TO CITY OF CHARLEVOIX

Lot Usage
10,500 SF TOTAL
2,491 SF BLDG



Schnelz Office Bldg / Residence 1/4" REAR ELEVATION

HOME PLANNING / DESIGN LTD.
301 ALGER

EXHIBIT 2



EXHIBIT 3

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve a Grant of Revocable License Agreement for Landscaping Improvements at the Intersection of Dixon Avenue and Mercer Boulevard

DATE: November 5, 2012

PRESENTED BY: Rob Straebel

Todd Wyett

ATTACHMENTS: 1. Revocable License Agreement
2. Landscape Plan
3. Boundary Survey
4. As-built Drawings Showing Underground Utilities

BACKGROUND INFORMATION: Todd Wyett would like to complete landscaping on City property at the corner of Dixon Avenue and Mercer Boulevard. See attached landscape plan. Mr. Wyett owns a house adjacent to the area proposed for landscaping. The Planning Commission has reviewed the landscape plan and approves.

Mr. Wyett originally wanted the City to sell him the small piece of land. As there are two 8" forced sanitary sewer mains and two valve vaults underground in the parcel, the City does not recommend selling the land to him. The two forced mains transition to a 12" gravity main in this area and are a critical component of the north side sewer infrastructure.

Mr. Wyett also requested that the Revocable License Agreement be revised to a permanent license agreement that functionally serves as giving the land away. This would also "tie the hands" of future councils leaving no flexibility for future decisions on this land. The proposed agreement is also consistent with other license agreements and shows the City is being "good stewards" of public land. Mr. Wyett also spoke of removing "spindly trees" on this City parcel at some time in the future. When to remove trees can be subjective and is best to leave the decision authority with City Staff. Although we would certainly work with Mr. Wyett on this, we feel that the decision to remove the trees should ultimately be decided by City Staff.

RECOMMENDATION: The City is being very reasonable in its approach with this agreement. We firmly support Mr. Wyett's efforts to beautify this area with landscaping improvements and have created the attached Grant of Revocable License for this purpose. Nevertheless, it is good public policy for the City to retain ownership of the land for future uses. Although, Staff does not foresee any changes to this intersection, we cannot "crystal ball" what may occur in the

future. It is best to maintain ownership of the land and make agreement revocable to give this City Council, and future City Councils, flexibility in the future. It is simply good public policy. If Mr. Wyett wishes to complete landscaping, Staff recommends City Council make a motion to approve Grant of Revocable License with a Landscape Plan dated November 5, 2012.

GRANT OF REVOCABLE LICENSE

KNOW ALL MEN BY THESE PRESENTS: that the CITY OF CHARLEVOIX, a Michigan municipal corporation, Grantor, whose address is, 210 State Street, Charlevoix, Michigan 49720, for the consideration of One and 00/100 (\$1.00) Dollar, grants and conveys to TODD A. WYETT TRUSTEE, OF THE TODD A. WYETT 1995 TRUST, AS AMENDED AND RESTATED, Grantee, whose address is 25900 West 11 Mile Road, Suite 250, Southfield, Michigan 48034 a revocable license for the following purposes:

for the sole purpose of allowing Grantee to landscape and maintain the Licensed Parcel consistent with the November 5, 2012 landscaping plan of Landscape Logic which is on file with Grantor.

The Licensed Parcel is described as:

In the City of Charlevoix, Charlevoix County, Michigan,
Commencing at the Northerly-most corner of Lot 11, Block 8 of Lindsay Park Addition to Charlevoix as recorded in Liber 2 of Plats, Page 40, Charlevoix County records; thence along the Northeasterly line of said block, South 70°55'11" East (recorded as South 70°52' East) 214.00 feet, BEING THE POINT OF BEGINNING OF THIS DESCRIPTION; thence continuing along said block line, South 70°55'11" East (recorded as South 70°52' East) 98.00 feet to a 1/2" re-rod on the Northwesterly line of Mercer Avenue, as expanded; thence along said Northwesterly line, South 42°01'11" West (recorded as South 42°08' West) 121.62 feet; thence Northerly along a curve to the left 123.94 feet (radius of said curve is 275.61 feet and the chord bears North 05°13'51" West 122.90 feet) to the point of beginning, being a part of Block 8 of Lindsay Park Addition to Charlevoix, Charlevoix County records and containing 4918 square feet. Subject to the rights of the public and of any governmental unit in any part thereof taken, used or deeded for street, road of highway purposes.

This license shall remain in effect until such time as Grantor or Grantee terminates it. Termination may be made without cause. This license does not convey an easement or any rights of ownership; but, rather, permits a terminable, permissive use that benefits both parties.

Nothing in this license shall prohibit Grantor from installing, repairing or maintaining utilities either above or below ground. In addition, Grantee shall not damage or remove existing trees on the Licensed Parcel. Grantee may irrigate the parcel by means of connection to the private irrigation system of Grantee which is located on an adjoining parcel owned by Grantee; provided, however, upon termination of this license and if requested by Grantor, Grantee shall remove any irrigation system components that are located on the Licensed Parcel.

WITNESSES:

SIGNED:
CITY OF CHARLEVOIX,
a Michigan municipal corporation

By: _____
Norman L. Carlson Jr., Mayor

By: _____
Carol A. Ochs, Clerk

STATE OF MICHIGAN
COUNTY OF CHARLEVOIX

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Norman L. Carlson and Carol A. Ochs, Mayor and Clerk, respectively of the City of Charlevoix, a Michigan municipal corporation, on behalf of the corporation.

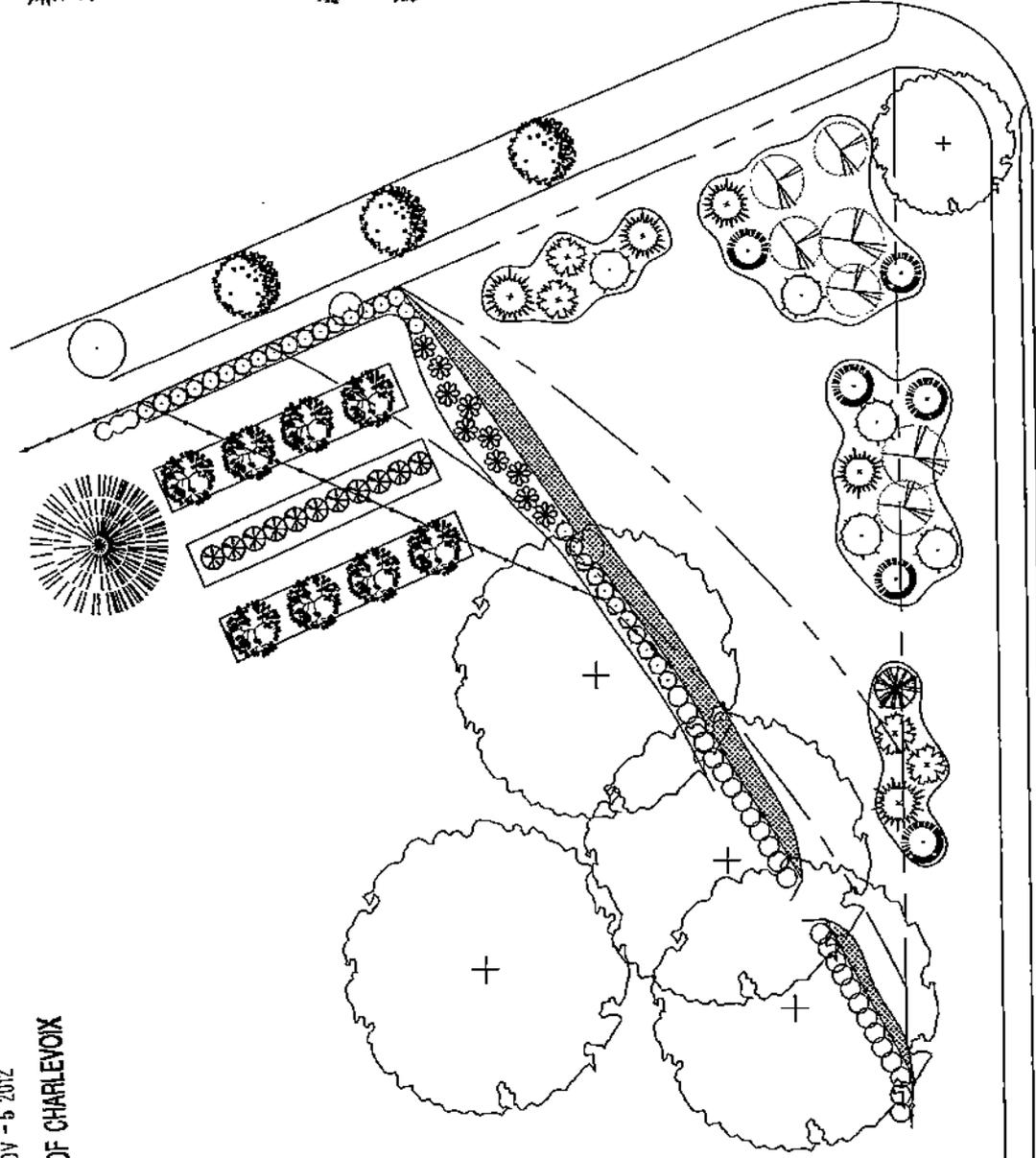
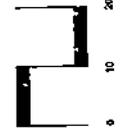
_____, Notary Public
Charlevoix County, Michigan
My commission expires:

Prepared by:
James G. Young (P22645)
City Attorney
P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635

PLANTING LEGEND

- HURRAY SPRUCE
- PALE SPRUCE
- SOBIRAN SPRUCE
- GREEN SPRUCE
- SALICU TRE
- CROTON EXCERENS
- CITY OF CHICAGO APPROVED QUAIL VARIETIES
- APPLE TREES (VARIOUS VARIETIES)
- TRANSITIONARY BIRCHES
- HYDRANGEA THUISSEUS SHADY
- RIVER ANEMONE
- CUTTING GARDEN

NOTES: 1) ALL SOIL CONDITIONS PROVIDED ON CITY PROPERTY



RECEIVED
 NOV - 5 2012
 CITY OF CHARLEVOIX

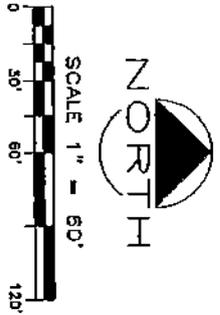
DESIGN
 BUILD
 MAINTAIN



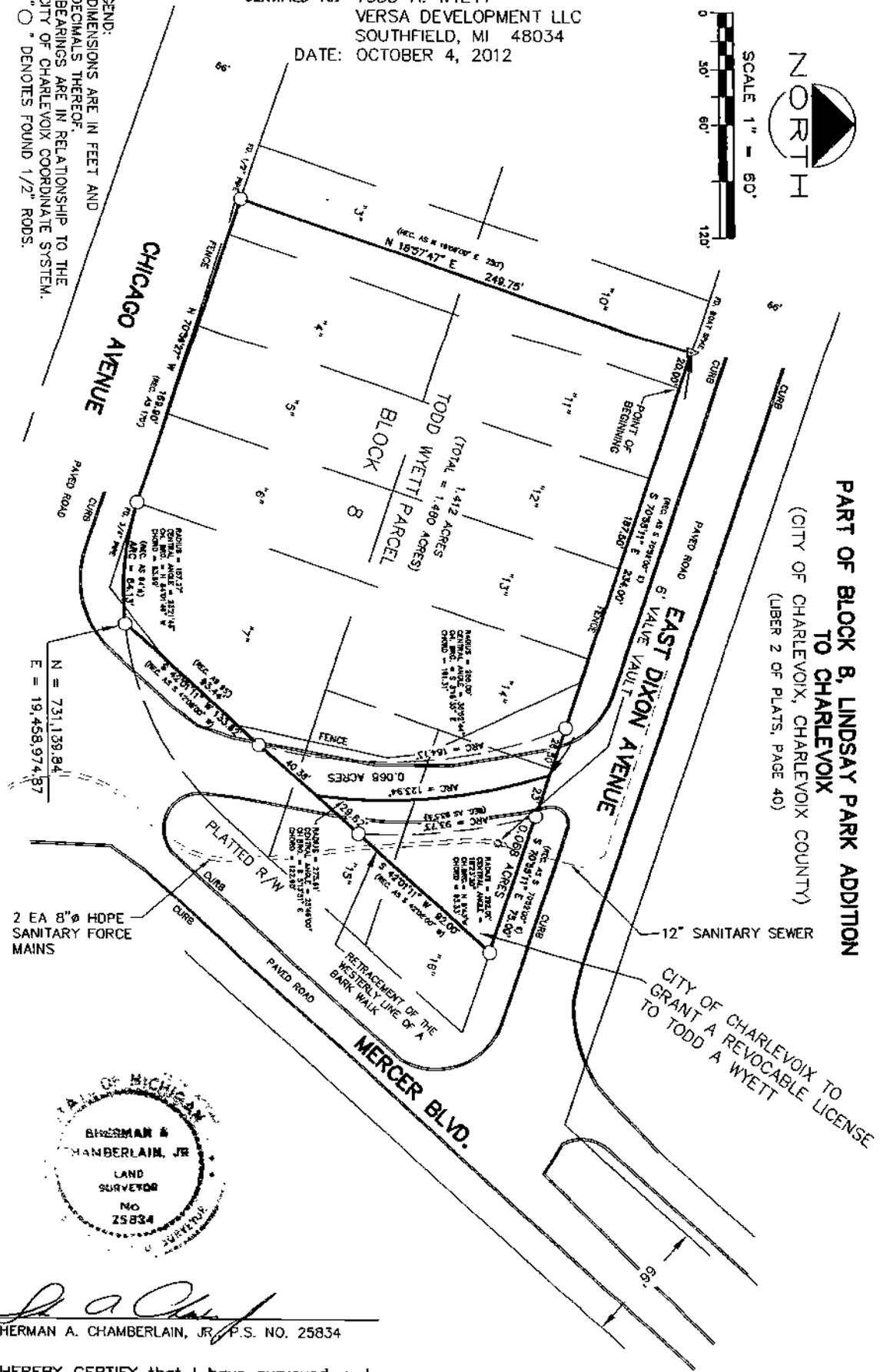
6347 U.S. 31 S. • P.O. BOX 73 • CHARLEVOIX, MI 49720
 P 231.547.3472 • F 231.547.3492 • LANDSCAPE@LOGIC.COM

CERTIFICATE OF BOUNDARY SURVEY

CERTIFIED TO: TODD A. WYETT
 VERSA DEVELOPMENT LLC
 SOUTHFIELD, MI 48034
 DATE: OCTOBER 4, 2012

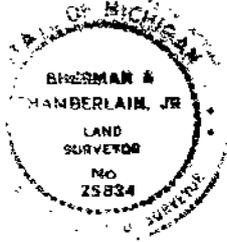


- LEGEND:**
- 1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 - 2. BEARINGS ARE IN RELATIONSHIP TO THE CITY OF CHARLEVOIX COORDINATE SYSTEM.
 - 3. "O" DENOTES FOUND 1/2" RODS.



**PART OF BLOCK 8, LINDSAY PARK ADDITION
 TO CHARLEVOIX
 (CITY OF CHARLEVOIX, CHARLEVOIX COUNTY)
 (LIBER 2 OF PLATS, PAGE 40)**

2 EA 8" Ø HDPE
 SANITARY FORCE
 MAINS



S.A.C.
 SHERMAN A. CHAMBERLAIN, JR. P.S. NO. 25834

I HEREBY CERTIFY that I have surveyed and mapped the property hereon delineated and that the ratio of position closure of the unadjusted field data exceeds 1:5000; and that it complies with P.A. 132, 1970.

FERGUSON & CHAMBERLAIN ASSOCIATES, INC.
 PROFESSIONAL SURVEYORS
 103 W. UPRIGHT STREET, CHARLEVOIX, MICHIGAN 49720
 FAX (231) 547-0021
 ey@freeway.net

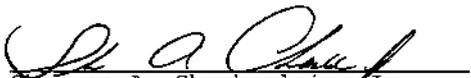
FIELD: S.P.-R.R.	STAKED: 3-25-08	DRAWN: R.C.
JOB: SB-22500c-08	DATE: 3-24-08	

THE CITY OF CHARLEVOIX PARCEL (Proposed to grant Todd A. Wyett a revocable license for landscaping purposes)

In the City of Charlevoix, Charlevoix County, Michigan, Commencing at the Northerly-most corner of Lot 11, Block 8 of Lindsay Park Addition to Charlevoix as recorded in Liber 2 of Plats, Page 40, Charlevoix County records; thence along the Northeasterly line of said block, South 70°55'11" East (recorded as South 70°52' East) 214.00 feet, BEING THE POINT OF BEGINNING OF THIS DESCRIPTION; thence continuing along said block line, South 70°55'11" East (recorded as South 70°52' East) 98.00 feet to a 1/2" re-rod on the Northwesterly line of Mercer Avenue, as expanded; thence along said Northwesterly line, South 42°01'11" West (recorded as South 42°08' West) 121.62 feet; thence Northerly along a curve to the left 123.94 feet (radius of said curve is 275.61 feet and the chord bears North 05°13'51" West 122.90 feet) to the point of beginning, being a part of Block 8 of Lindsay Park Addition to Charlevoix, Charlevoix County records and containing 4918 square feet. Subject to the rights of the public and of any governmental unit in any part thereof taken, used or deeded for street, road of highway purposes.

Prepared by:

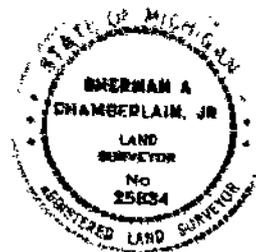
Ferguson & Chamberlain Associates, Inc.
103 Upright Street
Charlevoix, Michigan 49720

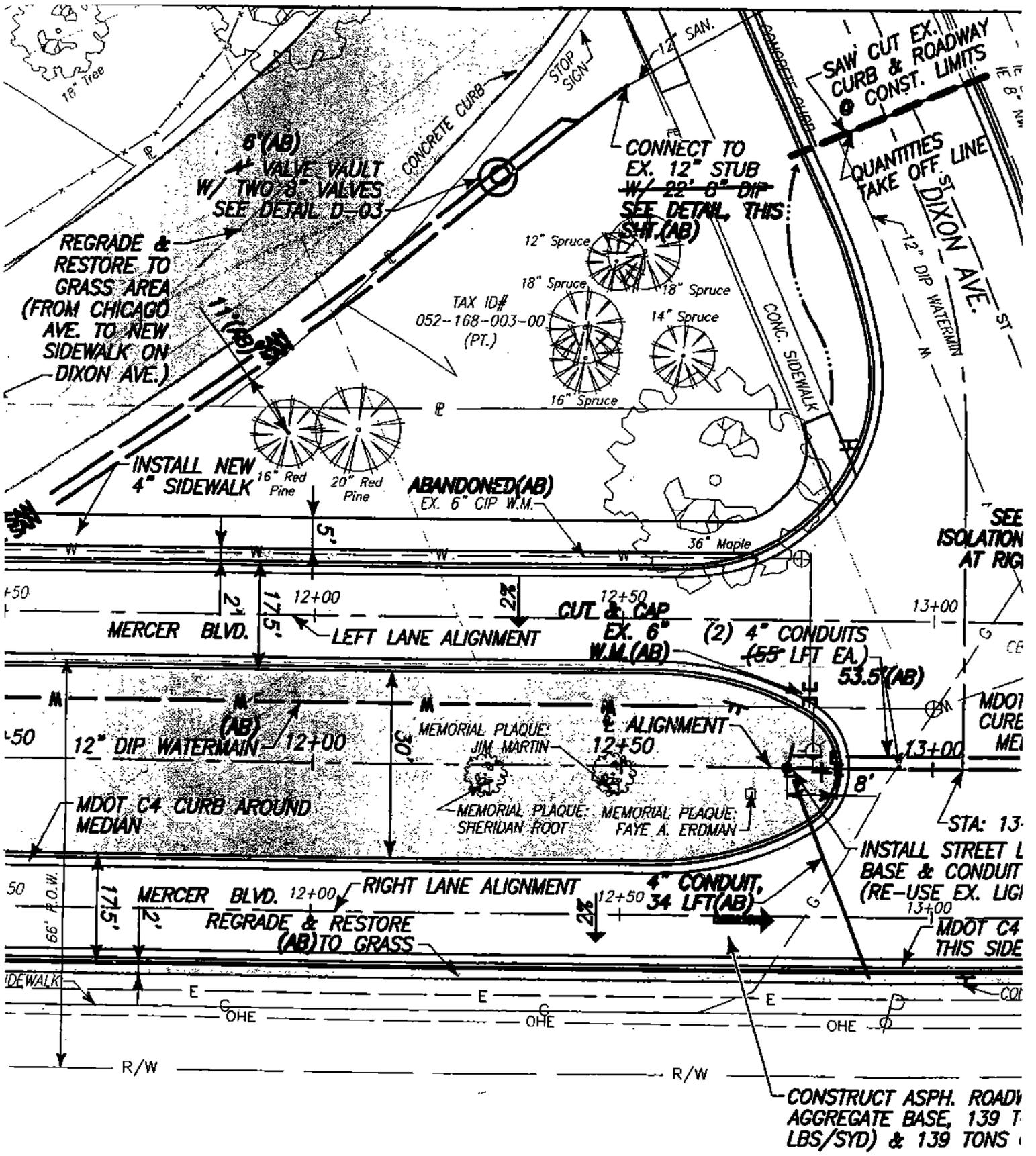

Sherman A. Chamberlain, Jr.
Professional Surveyor No. 25834

October 08, 2012

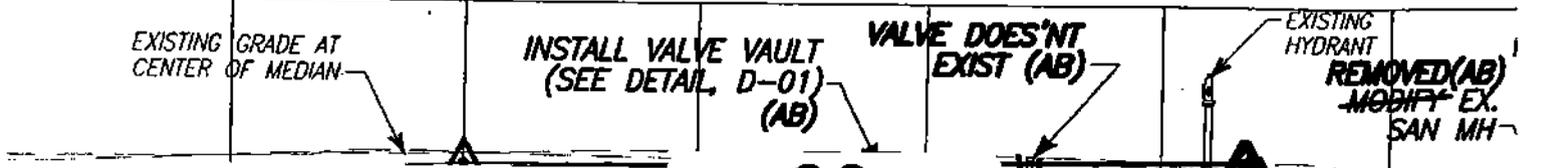
For: Todd A. Wyett
Job Number: SB-21016c-08

Sheet 2 of Two Sheets





CENTERLINE ALIGNMENT



CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Renew Docking Lease with Keweenaw Excursions, Inc.

DATE: November 5, 2012

PRESENTED BY: Rob Straebel

Craig Funkey, Keweenaw Excursions

ATTACHMENTS: Proposed Commercial Docking Agreement

BACKGROUND INFORMATION: Representatives from Keweenaw Excursions have asked the City consider renewing their two-year docking lease. Currently, they have a lease that is effective for both the 2012 and 2013 boating seasons. They would like to add another year on to the lease making the agreement effective for the next two years-2013 and 2014 boating seasons.

Keweenaw Excursions pays \$10,000 per year for docking privileges at the "Acacia Dock". The company pays four installments of \$2,500 throughout the season. The City pays for all electric, water and trash costs. Keweenaw Excursions have a separate lease for office space in the BIBCO building through the DDA.

As costs for water and electric have gone up each year, Staff is proposing, and company representatives are agreeable to, a 5% increase in docking costs for 2014. Docking costs would therefore amount to \$10,000 for 2013 and \$10,500 for 2014. All other provisions of the agreement would remain the same.

RECOMMENDATION: Keweenaw Excursions have been a valued addition to the City Marina and community. They have hosted many community-oriented events and are an added attraction to draw in tourists. Five percent increase in docking fees for 2014 is reasonable to cover addition costs for utilities. Staff recommends City Council make a motion *"to approve City of Charlevoix Commercial Agreement for a Docking Space for Keweenaw Excursions, Inc. for the 2013 and 2014 Boating Season."*

City of Charlevoix
Commercial Agreement/Seasonal Slip

Amount Due \$10,000 2013

Amount Due \$10,500 2014

Name (owner) Jason Funkey	Slip Acacia Dock
Address, City, State, Zip P. O. Box 370, Charlevoix, MI 49720	Telephone Home: (231) 237-9365 Cell: (231) 715-6622
Boat Name: Keweenaw Star	Boat Make/Year/Registration Number/Length (include accessories) 1981 Camcraft 98'
Power Yes	Sail Beam/Draft
Insurance Company Name Great American (Insurance certificate to be given to City)	Policy Number OMH 349-23-02-07

This permit agreement, entered into this 5th day of November, 2012 between the City of Charlevoix, and Keweenaw Excursions, Inc., a Michigan corporation (PERMITTEE), is subject to the following terms and conditions:

1. Grant of Permit: PERMITTEE is hereby granted rental of a boat slip for the 2013 and 2014 boating seasons starting November 5, 2012 and ending November 5, 2014. Said boat slip shall be the "Acacia Slip", and shall include provision of electric, water and trash.

Assignment: This permit is granted to a specific PERMITTEE, owner of the specific boat described above, and is not assignable to any other person, entity, or boat without the advance written consent of the City of Charlevoix. Partial disposition of ownership by the PERMITTEE must be reported to and accepted in writing by the City of Charlevoix to continue the grant of this Permit in full force and effect.

2. Limited Use of Permit. It is agreed that the purpose of this Permit is to allow the PERMITTEE to moor the boat described herein at the subject harbor for the purpose of charter boat tour/cruises.
3. Payment of Dockage Fees. The PERMITTEE shall pay to the City of Charlevoix dockage fee payments according to the following payment schedule for 2013 and 2014:

2013

June 1 st , 2013	\$2,500
July 1 st , 2013	\$2,500
August 1 st , 2013	\$2,500
September 1 st , 2013	\$2,500

2014

June 1 st , 2014	\$2,625
July 1 st , 2014	\$2,625
August 1 st , 2014	\$2,625
September 1 st , 2014	\$2,625

4. **Auxiliary Craft.** Dinghies or other auxiliary craft of a size suitable to be carried on board the boat may be water-stored in the slip so long as this storage does not extend beyond the limits of the assigned slip, and providing the dinghy is removed from the slip when the boat is out of the subject harbor for more than one day.
5. **Staffing Schedule.** The Harbor is staffed by City of Charlevoix personnel May 1 to mid-October. Utilities and services will be provided according to this schedule. PERMITTEE may, at his/her own risk, occupy a slip prior to and after the dates in the staffing schedule, provided PERMITTEE shall indemnify, hold harmless, and defend the City of Charlevoix for any and all losses, damages, or injuries resulting from PERMITTEE occupation of said slip outside the staffing schedule. The City of Charlevoix reserves the right to adjust the staffing in the event of an emergency, facility breakdown, or personnel shortages. The City of Charlevoix further reserves the right to adjust the electrical and water services provided in the event of emergency, facility breakdown, or due to the effects of high lake levels.
6. **Rental to Transients.** To maximize public utilization of the boating facility, PERMITTEE agrees to notify the Harbormaster of PERMITTEE planned departure and return dates whenever a boat trip will result in a slip vacancy of 48 hours or more. The City reserves the right to rent the slip described to transient users during slip vacancy with no remuneration to the PERMITTEE. PERMITTEE shall provide Harbormaster 48 hours advance notice prior to return to slip from such vacancy.
7. **Limitation of Liability.** PERMITTEE covenants not to sue the City of Charlevoix, or any of its departments, boards, commissions, officers, employees or agents for any claims whether legal or equitable, arising under, or in a manner related, to the privileges granted in this Permit. PERMITTEE hereby releases, waives and discharges the City of Charlevoix and all its departments, boards, commissions, officers, employees, and agents from any and all liability to PERMITTEE, its officers, employees, and agents, for all losses, injury damage to person or property, or death, and any claims or demands therefore, arising under, or in any manner related to, the privileges granted in this permit, except for and to the extent that all or some portion of

such damages or liability is adjudged to have arisen from the acts or omissions of the City, its agents or employees.

8. Indemnification. PERMITTEE covenants and agrees to save harmless the City of Charlevoix, and all of their departments, agencies, boards, commissions, officers, employees, and agents from any and all claims, demands, judgments, and expenses, including attorney fees, for any and all losses, damages, or injuries to person(s) or property, or death arising under, or in any manner related to (a) this permit, (b) the activities authorized by this permit, or (c) the use or occupancy of the premises that are the subject of this permit, as well as any other City owned lands. This indemnification and save harmless agreement is intended to and shall extend to all loss, damage, injury to person or property, or death, for and to the extent that all or some portion of such damages or liability is adjudged to have arisen from the acts or omissions of the City, its agents or employees.
9. Insurance. PERMITTEE agrees to arrange for the boat to be covered by a marine insurance policy (hull coverage and protection and indemnity liability coverage) to identify PERMITTEE insurance company and the relevant policy number on the first page of this Permit, and to provide the City of Charlevoix with a proof of insurance certificates on demand.
10. Default. In the event of any failure to perform by either party hereto, the injured party shall promptly and in writing, notify the other of any real or alleged default and specify a period of time, or not less than 15 days, to cure the same. The parties hereto shall otherwise possess all legal and equitable remedies available in the event of any such default. If either party must commence litigation to enforce its respective rights under this Agreement as owner or tenant or for any other reason related to this Agreement then the prevailing party shall be entitled to collect reasonable attorney fees plus all costs related to the litigation.
11. Termination by PERMITTEE. The PERMITTEE shall have the right to terminate this Permit by giving notice to the City of Charlevoix at least 72 hours in advance of such termination. If the termination is made prior to July 1 of the year in question, PERMITTEE shall be entitled to a 50% refund of the rental fee, if any paid in advance. If the termination is made after July 1 of the year in question, PERMITTEE shall not be entitled to a refund, but if the assigned slip is subsequently rented by the City of Charlevoix for the balance of the season, a prorated refund of up to 50% of the rental fee will be made to the PERMITTEE. The City of Charlevoix shall not, however, be required to re-rent the vacated slip.
12. Removal of Vessel. Upon Termination of Permit. PERMITTEE agrees to remove or cause the boat and equipment thereon to be removed within ten (10) days after the expiration of this Permit. If the PERMITTEE fails to remove the vessel, the City of Charlevoix shall have the option of:
 - a. Charging PERMITTEE daily rent upon a prorated basis for the space occupied; or
 - b. Pursuing any other remedy available under the law.
13. Possessory Lien. The City of Charlevoix shall be entitled to a possessory lien on said boat for any and all monies owed by the PERMITTEE to the City of Charlevoix for said slip, storage, work performed, services rendered and materials furnished to the PERMITTEE or his/her boat.

14. **Compliance with Local Ordinances.** PERMITTEE agrees to comply with all laws and with all police, fire and sanitary regulations and all other Ordinances of the Municipality, the County, the State of Michigan, and any other governmental authority having jurisdiction over the City of Charlevoix premises.
15. **Waiver.** Waiver of a violation of any of the foregoing terms and provisions shall not be construed as a waiver of any subsequent violation or violations.
16. **Severability.** It is mutually understood and agreed that all terms and provisions contained in this Permit are severable, and that in the event any provision shall be held invalid by a competent court, this Permit shall be interpreted as if such invalid term or provision were not contained in this Permit.
17. **Construction.** This permit shall be construed and interpreted according to the federal, state and local laws and regulations.
18. **Rules and Regulations.** The PERMITTEE agrees to comply with the terms and conditions of this Permit, and the rules and regulations governing use of the City of Charlevoix facilities and such other reasonable regulations as the City of Charlevoix may publish, post, and/or distribute from time to time.
19. **License.** The PERMITTEE is required to present to the City of Charlevoix a copy of his/her Charter Passenger License with this signed lease and to provide copies of required inspections.
20. **Parking.** PERMITTEE will be allowed one parking space in the existing parking lot. Additional parking for staff and customers will be allowed in general public parking areas designated for general public. Parking rules and regulations apply.
21. **Advertisement.** PERMITTEE may not advertise (except by brochure in the harbormaster building) on the docks or other marina property. PERMITTEE will be allowed to display one (1) advertising sign on the charter vessel no larger than 30 square feet.
22. **Equipment.** All equipment related to the charter tour business must be stored on the vessel. No storage of equipment will be allowed on the dock.
23. **Noise.** PERMITTEE will conduct business in such a fashion as to not disrupt occupants in adjacent slips.
24. **The Michigan Clean Marina program promotes and celebrates voluntary adoption of measures to prevent and reduce pollution from marinas and the surrounding areas. As a pledging partner, I pledge to do my part to improve and maintain Michigan's waterways by reducing and eliminating releases and discharges of harmful pollutants, sediments, nutrients, general refuse and anything else that may negatively impact aquatic environments. I also pledge to strive for continuous improvement in my daily environmental stewardship practices.**

Specific Harbor Instructions to Boaters

I certify that the information listed above is true and correct to the best of my knowledge.

Signature of Boat Owners/Permittee

Date

City of Charlevoix

Date

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve an Indemnification and Limited License Agreement

DATE: November 5, 2012

PRESENTED BY: Rob Straebel

ATTACHMENTS: 1. Indemnification and Limited License Agreement
2. Map of Airport

BACKGROUND INFORMATION: During the current runway improvements, airport consultants observed that Fresh Air Aviation was using two sections of Aero Lane Road (see map) to access the taxiway and their hangers. This creates a safety hazard between planes, vehicles and snowplowing equipment. Generally, vehicular traffic should be segregated from aircraft traffic. Although the risks are minimal, Staff felt it best to indemnify the City through a formal agreement in way that did not inhibit Fresh Air from continuing its charter operations. The attached agreement rectifies the liability issues and is agreeable to Fresh Air representatives.

The agreement has been developed and fully reviewed by Jim Young.

RECOMMENDATION: Motion to approve Indemnification and Limited License Agreement with Fresh Air Aviation.



INDEMNIFICATION AND LIMITED LICENSE AGREEMENT

BACKGROUND

The City of Charlevoix (City) operates a city-owned airport. Fresh Air Aviation, Inc. (Fresh Air) is a Part 135 operator at the city-owned airport. Fresh Air has informally used a portion of a vehicular access road in the south hangar area (the road) as a method of reaching a near-by taxiway. Airport improvements are underway, which increase use of the road. Fresh Air recognizes that there are risks to its aircraft and personnel and also to others because of Fresh Air's use of the road. For example, vehicles or pedestrians use the road any time of the year. During the winter, the road is used by snow plowing equipment and, by necessity, the attention of a driver of snow plowing equipment must be focused primarily on snow plowing operations. In addition, snow is piled adjacent to the road and at times could be high enough whereby a wing of Fresh Air's planes could strike the snow piles. Presently and as noted above, construction-related vehicles have increased use of the road. Fresh Air supports the airport improvements. It wishes to work cooperatively with the City. Fresh Air wishes to continue using the road and intends to do so with the utmost care. The City will agree to continued use of the road consistent with the terms of this agreement.

AGREEMENT

Accordingly, the parties agree as follows:

1. **USE OF THE ROAD.** As long as Fresh Air complies with this Agreement, it is given permission to use the road, as described above and as historically used, as a method of access from its hangar to the nearest taxiway.
2. **REQUIREMENTS DURING CONSTRUCTION.** During construction of the airport improvements that are on-going and which include, but are not limited to a taxiway extension, Fresh Air shall provide adequate staff to do the following during its use of the road by aircraft operated by Fresh Air:
 - A. remove construction barriers before and replace construction barriers after aircraft passage; and
 - B. prior to use of the road by Fresh Air aircraft, be certain that the road is clear of vehicles, people, objects or any other circumstance that might conflict with Fresh Air's aircraft;
3. **REQUIREMENTS AFTER CONSTRUCTION.** After the current airport improvements are completed and as long as aircraft being operated by Fresh Air use the road, Fresh Air shall continue to comply with section 2. above, except that Section 2.A. shall only apply if construction barriers are used in the future.

4. **INDEMNIFICATION.** During the construction of the current airport improvements, Fresh Air shall indemnify and hold harmless the City, City employees and agents, QoE Consulting, Reith-Riley Construction, Inc. and the subcontractors of Reith-Riley Construction, Inc. from any claim, cause of action or judgment related to Fresh Air's use of the road. After the construction of the current airport improvements, Fresh Air shall indemnify and hold harmless the City, its agents and employees from any claim, cause of action or judgment related to Fresh Air's use of the road. All of the indemnifications described above shall include attorney fees, expert witness fees and related costs incurred by a party to be indemnified and which relate to the investigation, evaluation, legal research and defense of any claim or cause of action regardless of whether litigation is ever commenced.

5. **TEMPORARY PERMISSION.** The permission granted by the City to use the road may be revoked by the City at any time with or without cause upon 30 days notice to Fresh Air, provided, however, the 30 day notice requirement shall not be applicable to an emergency situation as determined by the City.

In acknowledgment of this Agreement, authorized representatives of the parties are signing this document.

CITY OF CHARLEVOIX

Date: _____

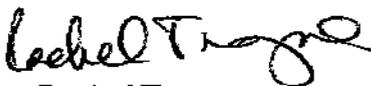
By: Norman Carlson

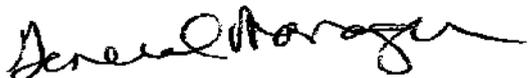
Its: Mayor

By: Carol Ochs
Its: Clerk

FRESH AIR AVIATION, INC.

Date: 10-8-12

By: 
Rachel Teague

Its: 

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve Engineering Proposal from Performance Engineering

DATE: November 5, 2012

PRESENTED BY: Rob Straebel

Jim Malewitz, Performance Engineers

ATTACHMENTS: Proposal submitted by Performance Engineers (PE)

BACKGROUND INFORMATION: At the last Council Meeting, Council agreed to the infrastructure work presented by Pat Elliott. This agenda item is to approve the specific proposal submitted by Performance Engineering to complete the engineering of those projects. See attachment.

Performance Engineering is proposing to provide initial engineering, bidding documents and engineering through construction at the same rates as provided for the 2012 engineering services. The proposal calls for:

- ❖ An overall cap of 16% of the construction costs for engineering services;
- ❖ \$80.00 per hour for engineering work through construction;
- ❖ \$54.00 per hour for inspection through construction.

All these rates are very competitive. The rates listed above are also lower than other engineering firms that have previously bid on engineering services for similar work.

Overall, Performance Engineers has successfully completed the majority of City infrastructure engineering in the past. Their staff is very knowledgeable of the City's existing infrastructure and needs, along with the City's requirements regarding new infrastructure. Performance also has the track record of bringing the majority of the past projects to completion and within budget. This is an indicator of solid, initial engineering that in turn avoids numerous change orders during construction which is how cost over-runs generally happen. Performance Engineering has also been an advocate for the City when negotiating with contractors as unforeseen conditions arise.

RECOMMENDATION: Staff has been very pleased with Performance Engineering and the work they do for the City. They are a local company that has a comprehensive understanding of

City's entire infrastructure. They complete the work in a timely fashion and are very competitive with their rates and charges. Staff recommends that Council approve the proposal, as submitted, by Performance Engineers dated October 29, 2012, and contract with them for the 2013 engineering services.



Performance Engineers Inc.
Civil / Structural Engineering

October 29, 2012

Mr. Rob Straebel, City Manager
City of Charlevoix
210 State Street
Charlevoix, MI 49720

RE: Engineering Services Contract For 2013 - Clinton Street From Grant to Park, Lewis Street Including Adjacent Alleys, and West Garfield From US31 to State Street

Rob:

Performance Engineers is grateful for the opportunity to work with the City of Charlevoix on a variety of significant projects in our community. Over the years it has been a privilege to work closely with outstanding City staff on a wide variety of infrastructure projects through out the City. Performance Engineers is proud to be a member of the Charlevoix community for the past 22 years. We believe this helps our company understand the City's vision and goals for each project. Our staff that consists of five engineers, three civil and two structural, continually challenges each other through the entire design and review process. This approach has provided the most economical yet sound engineering solutions for your projects. We have a long track record of bringing projects in on time and within budget.

At this time it is my understanding the City wishes to complete the design and bid phases for infrastructure improvements slated for 2013. Upon the receipt of bids the City will determine the scope of the projects to be constructed next year. I proposed that the design engineering and engineering through construction for these be the same as was agreed upon during 2012 for the Clinton Street and May/Garfield Project work: 8% of construction costs for design and 8% of construction costs for engineering through construction and inspection. I also propose that we hold our hourly rates established back in 2010 for design and inspection.

The construction work as we understand it at this time includes the following:

Clinton Street From Grant to Park Street – This is the last block of Clinton Street that was not constructed during 2012 due to budget constraints. The design has been completed and it was bid out during 2012 but cut due to funding considerations. The only engineering required for this project would be that necessary for incorporating these documents into bidding documents along with 8% of construction costs for engineering through construction and inspection. Additional engineering may be required beyond the agreed upon percentage of construction if it is decided to reconfigure portions of this project.

Lewis Street From US-31 to Dixon Street – Lewis Street has an adequate water main but needs to have water services changed over from the existing 4" CIP to the 12" DIP water main. The sanitary including services and storm sewers need to be reconstructed. Also to be included is new curb and gutter and complete roadway reconstruction with all new driveways.

Alleys That Intersects Lewis Street which runs east and west along with north and south branch alleys – This work involves reconstruction of pavement sections that have extensive cracking and settlement. Two alleys branch off of Lewis Street. Gravel base will be reconstructed and two courses of asphalt will be placed on the new stable base. Adjacent driveways will be reconstructed to blend into the new asphalt.

West Garfield From US-31 to State Street – This road section of West Garfield is in need of new sanitary sewer including services, storm sewer, and water mains including services. Also to be included is new curb and gutter, bike route considerations, a safe route across US-31, and complete roadway reconstruction with all new driveways.

In order to allow for flexibility in the budgeting of the proposed work Performance Engineers will design the project with the thought of being able to remove portions if necessary. This proposal will provide for those additional design fees necessary for separating sections from this project as directed.

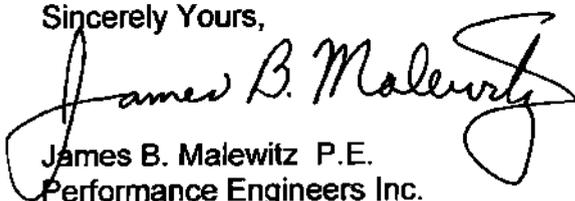
The construction estimates for these renovation projects have been submitted to you previously and are summarized as follows: Clinton Street from Grant Street to Park \$180,000 (determined by what was previously bid during 2012); Lewis Street \$230,820; Lewis Street Alleys \$51,750; and West Garfield from US-31 To State Street \$227,530. The total construction value is therefore estimated at \$690,100.

Performance Engineers propose to continue to provide Resident Engineering and Inspection through the construction phase of the project at the low rates of \$80/Hr and \$54/Hr respectively; the same rates that we presented with our proposals for the last several years. Also we will hold all our other rates as established previously, see attachment #2.

In the case for the 2013 project work described above I would like to propose providing engineering at a cost of \$96,016. Also required as part of this work will be additional costs of \$5,500 to reformat the plans and bidding documents should a portion or section(s) be broken out from the overall bidding plans if that becomes necessary, therefore the net total proposed is \$101,516. Please see attachment #3 for a summary of the City of Charlevoix 2013 design fees and construction estimates.

I appreciate this opportunity to provide you with this proposal. If you have any questions please give me a call.

Sincerely Yours,


James B. Malewitz P.E.
Performance Engineers Inc.

**CITY OF CHARLEVOIX CLINTON STREET GRANT TO PARK, LEWIS,
AND WEST GARFIELD US-31 TO STATE**

DESIGN IS TO INCORPORATE THE FOLLOWING:

- A) Plans and specifications to accomplish the construction work as stated in the proposal for each street/alley.
- B) Create final construction drawings, bidding documents and specifications.
- C) Random undersirable sidewalk sections designated by the City are to be identified in the bidding documents as part of this overall project.
- D) Construction is to start after spring frost laws of 2013 have been removed and is to be completed before Memorial Day 2013 or if fall option is chosen, October 31, 2013 depending on bid pricing.
- E) Provide a project schedule to include sufficient time to coordinate the project with adjacent businesses and home owners.
- F) Produce reproducible "as Builts" along with "as built" in electronic form, acceptable to the City of Charlevoix. Additional invoicing may be required due to final content and formats agreed upon.
- G) All design survey services required for the above work is to be included in this proposal.
- H) Document existing site conditions prior to construction throughout entire area to be disturbed for engineering and future comparison purposes.
- I) Concrete apron will be designed at the Garfield/Bridge Street Intersection.
- J) All coordination with DEQ for permit application through receipt of permit.
- K) Work is to include a " not to exceed" time and materials cost for design of the project, including preliminary design, final design, bidding and as-builts, construction engineering and inspection.
- L) Engineering services will be invoiced at the rates stated in Attachment #2 with a ceiling of 16% of the constntruction value of the project. There will be no fee for travel time.

DESIGN FEES ARE STATED AS FOLLOWS:

- 1) Fee from Performance Engineers Inc. for all the work listed above would be 16% of the construction value of the project. Preliminarily the estimated construction cost is \$690,100. The fee therefore would be \$96,016. This fee will be adjusted up or down depending on the actual final construction amount realized. (As with all other contracts if there are adjustments made to the design work due to unforeseen circumstances or if work is added to the contract, those additional design fees will be negotiated as we always have if they do not translate to an appropriate increase in construction costs). There will be approximately \$5,500 required to reconfigure plan to allow for reducing the scope of the project based on availability of funds. The total cost would therefore be \$101,516.
- 2) Overall engineering services for this project including design, survey, design engineering, construction engineering, and inspection are to be equal or less than 16% of construction costs minus the engineering already completed. Some additional services may be required if design is required that does not relate to increased construction costs.
- 3) If design engineering work is required after bidding, the design engineering rate will be at the resident engineering rate of \$80/Hr.
- 4) Soil borings and advertising when required are a pass through cost and is not part of this proposal.
- 5) Soil density, asphalt density and materials testing when required are a pass through cost and is not part of this proposal.
- 6) Performance Engineers will work at a supervisory engineering rate of \$80/Hr and at an inspector's rate of \$54/Hr.
- 7) Inspector assigned is subject to the approval of the City.
- 8) Engineering services invoices through CD's are all to be submitted for payment before construction bids are opened.
- 9) Fee schedule for design and construction engineering is as shown in Attachment #2.

ATTACHMENT #2

DESIGN FEE SCHEDULE

**FOR CLINTON STREET & WHITE PARKING LOT
AND GARFIELD / MAY STREET INTERSECTION RECONSTRUCTION**

CONSTRUCTION RATES AS LISTED IN PROPOSAL

Resident Engineer - James Malewitz	\$80 / HR
Inspector	\$54 / HR

DESIGN UP TO BIDDING

Principal Engineer VII - James Malewitz	\$110 / HR
Principal Engineer VII - Chuck Stein	\$110 / HR
Principal Engineer VII - Robert Bomier	\$110 / HR
Engineer VI - Bryan Lindfors	\$97 / HR
Professional Engineer V - Aaron Nordman	\$90 / HR
Computer Aided Drafting - Technician V	\$67 / HR
Clerical - Sandy Malewitz	\$42 / HR

DESIGN AFTER BIDDING

Principal Engineer VII - James Malewitz	\$80 / HR
Principal Engineer VII - Chuck Stein	\$80 / HR
Principal Engineer VII - Robert Bomier	\$80 / HR
Engineer VI - Bryan Lindfors	\$80 / HR
Professional Engineer V - Aaron Nordman	\$80 / HR
Computer Aided Drafting - Technician V	\$67 / HR
Clerical - Sandy Malewitz	\$42 / HR

ATTACHMENT #3

SUMMARY OF CITY OF CHARLEVOIX 2013 WORK

Description of Work	Estimate of Construction	Design Engineering	Through Construction and Survey
Clinton From Grant to Park	\$180,000.00	\$0.00	\$14,400.00
Lewis Street	\$230,820.00	\$18,465.60	\$18,465.60
Lewis Street Alley	\$51,750.00	\$4,140.00	\$4,140.00
West Garfield From 31 to State	\$227,530.00	\$18,202.40	\$18,202.40

TOTAL OF ESTIMATES =	\$690,100.00	\$40,808.00	\$55,208.00
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ENGINEERING =	96,016
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\$5,500 that will be required to reformat the plans and bidding documents once a portion has been broken out or added in from the overall bidding package due to budget constraints current or prior.

ENGINEERING TOTAL =	\$101,516
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Engineering work will be invoiced based upon the overall \$101,516 fee. The break down above is provided to show clearly that design for Clinton Street is already completed and is not part of this proposal.