

AGENDA
CITY OF CHARLEVOIX CITY COUNCIL MEETING

Monday, March 18, 2013 - 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 – March 4, 2013 Regular Meeting
 - B. Payroll Check Register PG 1-3
 - C. Accounts Payable Check Register PG 4-7
 - D. Planning Commission Resignation – Francis “Brownie” Flanders PG 8
 - E. Zoning Board of Appeals Resignation – Adam Whitley PG 9
 - F. Certificate of Appreciation to Nate and Jonathon Lindfors – Eagle Scouts PG 10-13
- V. Public Hearings**
- VI. Reports**
- VII. Requests, Petitions and Communications and Actions Thereon**
 - A. Discussion Regarding Fireplace Proposal in East Park PG 14-25
 - B. Consideration to Approve a Support Letter for a Coastal Zone Management Grant through the Charlevoix Conservation District PG 26-30
 - C. Consideration to Approve a License Agreement and Bill of Sale for Telecommunications Tower at Mt. McSauba PG 31-39
 - D. Consideration of Renewing the Lease to WCCW for Mt. McSauba Tower Space PG 40-47
- 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. Audience – Non-Agenda Input (written requests take precedent)**
- XIII. 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.

Posted March 14, 2013 5:00 p.m.

City
of
Charlevoix,
Michigan



Certificate of Appreciation

Nathan Lindfors

This certificate is awarded in appreciation of the outstanding dedication, leadership and hard work given to the citizens of the City of Charlevoix on the construction of the benches and seating area at the Charlevoix Middle School.



Congratulations in achieving
Boy Scouts highest rank, the Eagle Scout award.

MAYOR

CLERK

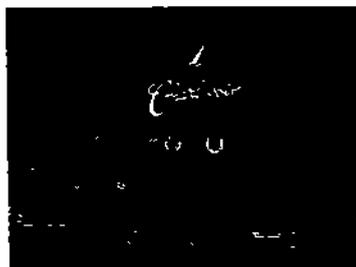
City
of
Charlevoix,
Michigan



Certificate of Appreciation

Jonathon Lindfors

This certificate is awarded in appreciation of the outstanding dedication, leadership and hard work given to the citizens of the City of Charlevoix on the construction of the Pine River Channel entrance sign.



Congratulations in achieving
Boy Scouts highest rank, the Eagle Scout award.

MAYOR

CLERK



Charlevoix



CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Discussion Regarding Fireplace Proposal in East Park

DATE: March 18, 2013

PRESENTED BY: Mayor Carlson
Rob Straebel

ATTACHMENTS: 1. Visual Impact Comparison
2. Oval Fireplace Circulation Study
3. Buday/Hitz Report to Fireplace Steering Committee
4. Pages 11-13 of the City Rules and Procedures
5. Proposed Hours of Operations

BACKGROUND INFORMATION: There was a joint meeting with Planning Commission, DDA and City Council held on March 11, 2013 that discussed the merits of installing a fireplace in Plaza B. All three bodies discussed conceptual drawings developed by Richard Hitz and Mark Buday showing an oval-shaped fireplace with a much lower profile. Pedestrian circulation issues were also discussed with consultants stating that there was adequate square footage in Plaza B to install a fireplace. The Planning Commission determined that the fireplace was in accordance with the City's Park and Recreation Plan and Master Plan (5-2 vote in favor). The DDA voted unanimously (8-0) to recommend to Council that the project proceed to final design.

Council Options

1. Vote to not construct the fireplace

This would take a three-step process (see Page 11-13 of the City Charter attached):

- A. Motion to suspend Rule 13K in the Rules of Procedure for City Council is required. A 2/3 affirmative vote of Council is needed to suspend Rule 13K.
- B. Next would be a motion to reconsider decision on August 9, 2012 to construct original design of fireplace. An affirmative vote by a majority of City Council is needed at this point.
- C. Finally, after these two steps, Council could make a motion to revoke approval of original design of fireplace on August 9th, 2012 and direct that Plaza B be restored to its original condition.

2. Direct City Staff to work with John Winn to construct the original design, an 8'x 8'x 20' fireplace as proposed on August 9, 2012*

- A. Motion to suspend Rule 13K in the Rules of Procedure for City Council is required. A 2/3 affirmative vote of Council is needed to suspend Rule 13K.
- B. Next would be a motion to reconsider decision on September 4, 2012 to halt construction of the fireplace. An affirmative vote by a majority of City Council is needed at this point.
- C. Finally, after these two steps, Council could make a motion to construct fireplace as proposed on August 9th, 2012.

*This option is not recommended as both the Planning Commission and DDA voted in favor of a much smaller design with a smaller footprint. Additionally, the revised design has much more support in the community and does not block views of Round Lake.

3. Proceed with finalizing new design for fireplace in Plaza B

Council would direct Richard Hitz and Mark Buday to complete final design on the fireplace with a lower profile and oval-shape and with some seating around fireplace. New design would be reviewed by City Council, and if approved, project consultants would develop construction drawings. To date, the City has paid \$13,494 for work completed so far-Drost \$10,994 and Louis Drapeau Masonry \$2,500. (City has paid \$300 to Mich Con for extending natural gas line to the site-this is consistent with City Council's motion to approve original design.)

If Council chooses this route, a motion could be made: *"Contingent upon benefactor paying for future design costs and reimbursing the City for invoices paid for past work on the fireplace in the amount of \$13,494, City Council directs Richard Hitz and Mark Buday revise the design for the fireplace using with the following design parameters:*

- ❖ *Use the current fireplace location;*
- ❖ *Incorporate an oval-design;*
- ❖ *Minimize the height of the fireplace to protect Round Lake viewsheds;*
- ❖ *Develop some form of seating around the fireplace;*
- ❖ *Strive for an energy-efficient fireplace."*

There could be other design standards that Council may choose to add to the aforementioned list.

Total estimated costs to operate have been reduced substantially since the original discussion back in the summer of 2012. This is for three main reasons:

1. BTUs of natural gas unit are proposed to be reduced from 550,000 to 300,000.

2. Natural gas costs have gone down from \$0.79 in the summer of 2012 to \$0.75 per ccf.
3. Annual hours of operation are proposed to be reduced from 1,762 to 1,341. See attachment.

These three factors add up to a substantial reduction in annual operating costs from approximately \$6,766 to \$3,133. It is important to note that this estimate uses current natural gas costs. It is also important to note that there is a resident who has verbally committed to paying first five years of gas costs.

We have had a Council member approach the City Manager about adopting a Gift Acceptance Policy that would apply to fireplace project. Council should discuss this and give direction.

The following was included in the March 11, 2013 Joint Meeting packet.

A brief history would be helpful. In the summer of 2012, the City hosted three public meetings on the fireplace with very few comments received on the proposal. Soon thereafter, the community voiced opposition to the fireplace idea and on September 12, 2012 City Council halted construction on the fireplace.

Since that time, a Fireplace Design Committee has been established with architect Mark Buday and Richard Hitz volunteering their time to assist with development of the fireplace plans. The Committee is made up of three voting members: Jody Bingham; Pat Miller; and Becky Doan. Non-voting members of the Committee include John Winn and Rob Straebel. The Committee has met three times in well-attended public meetings.

On February 28, 2013 the Committee voted 2-1 in favor of the following motion:

"It has been through much discussion there has been consensus on having the fireplace be built in the existing location, however there are concerns about spacing for people for walkways on the sidewalk, for room for strollers, wheelchairs, and folks that are in motorized scooters, concerns that the fireplace is too close to the street, those are some concerns that I feel strongly about so that would be my motion."

During the public approval process, there were various issues that came to light by the public that the Committee has addressed. The following is a summary of issues that were identified by the public and how the Committee and architect propose to mitigate such issues.

1. Location

Mr. Buday and Mr. Hitz did a full review of all possible locations in East Park. They strongly feel, and the Committee agreed, that Plaza B (current location of fireplace) was the best location in the park. This location is highly visible from Bridge Street and has a strong pedestrian

connection that would serve as an attraction for downtown visitors. This is also an area that is centrally located and could use some improvement.

2. Design

Original square design called for an 8' x 8' x 20' high fireplace that was out of scale with East Park and blocked views of Round Lake. See "Visual Impact Comparison" showing original design with a preliminary revised sketch showing reduced height. The new design incorporates a much smaller footprint that is oval-shaped with a much lower profile to not compromise viewsheds. Height of the fireplace is proposed to be no more than 3'-4'. The oval-shaped fireplace allows for wider pedestrian walking areas accommodating strollers and handicapped persons. The smaller fireplace footprint would also facilitate installing benches or sitting walls. See attached Oval Fireplace Circulation Study showing 75 people congregating in Plaza B.

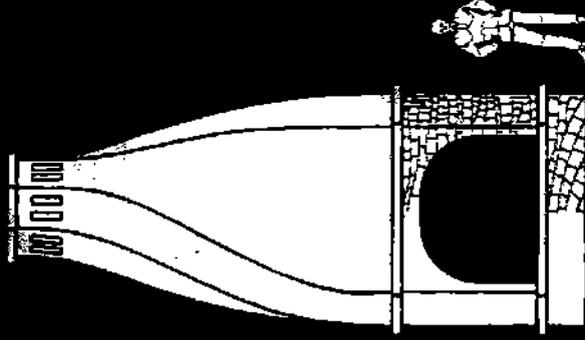
3. Energy Usage

Many residents have commented on the long-term costs of fueling a natural gas fireplace. To create a more energy efficient fireplace the overall natural gas consumption has been reduced by 38%. This is by reducing the BTUs for the fireplace. Overall, estimated annual natural gas costs have been reduced from \$6,700 to \$4,154. This figure is based upon an estimated 1,762 operation hours per year. The amount of hours of operation could certainly be reduced. Costs to install and connect a DTE natural gas line from East Clinton Street to fireplace location are \$300. The natural gas service line has not been installed as of yet.

The fireplace proposal should be based upon its own merits and long-term operating costs should be discussed. Nevertheless, there is a Charlevoix resident who has committed to paying for natural gas costs for at least the next first five years. It would be prudent for Council to address whether City should be pay for ongoing costs after donations are extinguished, or whether this should be funded by private donations.

RECOMMENDATION: Discussion. f Council is comfortable, a motion could be made selecting one of the three options provided above.

VISUAL IMPACT COMPARISON



Notes:

- 1) The drawing for this study is based on East Park Construction Drawings and has not been updated to reflect as-built conditions. Dimensions shown in the drawing are approximate but within the range of accuracy needed for the study.
- 2) There are approximately 75 people shown in the plaza. The estimated maximum functional density of the plaza is 180 people (5 sq ft/person), a higher density will make it difficult to move through the space.

10'-0"

Traffic Flow (Min. 5' wide each side)

Gathering Area (variable width)

Approximate edge of existing sidewalk

Gathering Area (3' wide)

OVAL FIREPLACE

CIRCULATION STUDY

Draft Report to the Fireplace Steering Committee City of Charlevoix

Prepared by:
Mark Buday, AIA
Richard Hitz, ASLA

We have been asked by the City of Charlevoix City Council to assist the Fireplace Steering Committee in evaluation of a proposed fire feature and its location at East Park.

Based upon two public meeting with comments from the General Public and assistance of the steering committee we have found the following:

- 1) The fireplace as proposed (8' wide and 20' tall) is out of scale with the context of the mid-park plaza where it is to be located.
- 2) After evaluating many alternative sites we have determined that the mid-park plaza location is the best choice to locate a fire feature because it meets all of the following requirements:
 - a. Visible from Bridge Street
 - b. Does not block view of East Park and Round Lake from Bridge Street
 - c. Strong pedestrian connection to Bridge Street
 - d. Has a direct connection to all-season Park events
- 3) The fire feature should be modified from its current form to meet the following requirements:
 - a. Not greater than █ in height at its highest point
 - b. It should have a seat wall surround or associated benches
 - c. It must be dynamic and sculptural when the fire is both lit and unlit—we recommend exploring the use of LED lighting to illuminate the sculpture, especially when it is not lit
 - d. It should not impede the flow of pedestrian traffic in the plaza—we suggest an oval shape as shown in our process presentation documents
 - e. It shall be designed in such a way as to minimize the chance of accidental injury from the fire
 - f. It shall be simple to operate and maintain
 - g. Energy consumption shall not exceed 300,000 Btu/hr
 - h. It should be warming on cool days and have year round use

General Notes and Discussion

After listening to many comments, reviewing both the original park drawings and current as-built conditions we have come to realize that the area we are calling Mid-Park Plaza is broken. After concerns of blocking the view of the lake the second most

frequently heard complaint people raised was the issue of the plaza being overcrowded and difficult to move through on event days.

We believe the problems with the plaza stem from a combination of two factors:

- 1) The lack of a consistent paved surface—the planted groundcover had no chance to survive the heavy use and has been replaced with woodchips
- 2) Vendor stalls placed in the middle of the plaza area.

The plaza was originally designed to have full, hard surface paving but due to project budget cuts only a peripheral pathway was installed. The heavy use of the area as the entry point from Bridge Street to the Park requires a fully paved area. We recommend installing brick pavers in the currently unpaved portion of the plaza.

The vendor stalls placed in the middle of the plaza disrupt the pedestrian flow in the plaza and along the Bridge Street sidewalk. People who are purchasing items at the stalls and who are waiting in line to purchase items are forced to stand in the flow of pedestrian traffic, causing disruptions.

We recommend at a minimum moving the vendors to the edge of the seat wall area and reducing their size and number. The plaza will function best without the vendors and that is our preferred recommendation.

Finally, we believe the fire feature will be a good asset to the plaza, especially during those many days of the year when a large event is not taking place in the Park. It will become a gathering point and a dynamic entry sculpture to the Park while making the plaza more human-scaled and comfortable for individuals and small groups of people. Our process presentation documents graphically demonstrate these points.

end

Rules of Procedure for City Council

3. Amendments to certain provisions of the City Zoning Ordinance, over qualifying protests: **An affirmative vote of 3/4 of the members of the Council is required.**
 4. The question of the City Council, on its own motion, declaring for a revision of the Charter: **An affirmative vote of 3/5 of the members of the Council is required,** the Charter not having otherwise provided.
 5. The question of proposing on its own motion an amendment to the Charter; **An affirmative vote of 3/5 of the members of the Council is required.**
 6. A Resolution to establish joint public improvements with governmental entities under Act 81 P. A/ 1925 (5.2451, Mich. Stat. Ann.): **An affirmative vote of 3/5 of the members of the Council is required.**
 7. Resolution to elect to come under the provisions of Act 135, P.A. 1945 (Municipal Retirement Act) (5.4001 et seq. Mich. Stat. Ann.) **An affirmative vote of 3/4 of the members of the Council is required.**
- f. Actions permitted to be taken by less than a *majority* of the whole council, viz.:
1. In the absence of a quorum, two or more members may adjourn any *regular* or *special* meeting of the Council to a later date.
 2. The City Council may, by a vote of not less than two of its members compel the attendance of its members and other officers of the City at its *regular* meeting, and enforce orderly conduct therein.

Rule 13:

MOTIONS:

- a. **A SECOND IS REQUIRED:** the Chair shall not put any motion, or question, to a vote of the Council unless, and until, the same is seconded, excepting as may be otherwise provided in these Rules.
- b. **POINT OF ORDER:** Any member of the council may rise to a point of order, and after stating such point, may demand the ruling of the Chair thereon. When any such point is raised, the Chair shall promptly rule thereon. Any member of the Council may also arise to

Rules of Procedure for City Council

a point of personal privilege and shall be permitted to explain such point, and have the members statement, if brief, made of record in the minutes of the meeting. The Council member may also file a statement in writing to like effect.

- c. DURING DEBATE: When a question is under debate, no motion shall be received but -
 - 1. To fix the time to which to adjourn.
 - 2. To adjourn.
 - 3. To take a recess.
 - 4. To lay on the table.
 - 5. For the previous question.
 - 6. To amend.
 - 7. To postpone consideration
- d. These several motions shall have precedence in the order 1 through 7.
- e. TO ADJOURN: A motion to fix the time to which to adjourn, or to adjourn, shall always be in order, except when a motion to fix the time to adjourn is already pending. A motion to set time to adjourn or to adjourn shall be decided without debate.
- f. TO RECESS: A motion for a recess, pending the consideration of other business, shall not be debatable. When a recess is taken during the pendency of any question, the consideration of such question shall be resumed upon the call to order.
- g. TO TABLE: Motions to lay on the table shall carry all pending subsidiary questions except in case of laying an appeal or motion to reconsider on the table. A motion taken from the table shall be divested of all subsidiary motions except motions to amend.
- h. TO CALL FOR THE PREVIOUS QUESTION: A motion to call for the previous question shall be decided without debate.
- i. TO AMEND: When a motion to amend by striking out and inserting other words is made, the same shall be deemed indivisible but either the words proposed to be struck out or to be inserted may be amended.

Rules of Procedure for City Council

- j. TO DIVIDE: Any Council member may call for the division of any question, which shall be divided if it comprehends propositions so distinct that, one being taken away, a substantive proposition shall remain.
- k. TO RECONSIDER: When a question has once been decided, it shall be in order for any Council member to move the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order unless made on the same day the vote was taken, or at, but not later than, the next *regular* meeting of the Council, nor shall the same questions, once having been passed, be reconsidered more than once. **The Council shall require the votes of the same majority of the Council on a timely motion to reconsider an action as was required for its passage.**
- l. TO SUSPEND THESE RULES: Rule 13 (k) may be suspended by **an affirmative vote of 2/3rd of all Council members.** Any other rule may be suspended by **an affirmative vote of 2/3rd of the Council members actually present** unless such would conflict with a state statute, the City Charter or a City Ordinance. Rule 20, however, shall not be suspended.
- m. DURING A VOTE: When a roll call of "Yes" and "No" votes is ordered upon any question; after the question is stated from the Chair, the Clerk will call the roll. After the first vote is given, Council members shall neither be entitled to speak on the question nor shall any motion be in order, until such roll call is finished and the result declared.

Rule 14: RECONSIDERATION; SPECIAL RULE:

A motion to reconsider may be laid on the table. The tabling of a motion to reconsider shall not carry with it the original question but shall be equivalent to a refusal to reconsider. It shall not be in order to take from the table a motion to reconsider, nor shall the vote whereby any motion to reconsider was laid on the table be reconsidered.

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve a Support Letter for a Coastal Zone Management Grant through the Charlevoix Conservation District

DATE: March 18, 2013

PRESENTED BY: Kelly Martin, Charlevoix Conservation District

ATTACHMENTS: Summary-Private Lands Stewardship of Rare Northern Michigan Coastal Species

BACKGROUND INFORMATION: The Charlevoix Conservation District has requested the City submit a support letter for a grant they are seeking to assist local landowners in the identification and preservation of rare plant species. Grant monies would assist the Conservation District in educating private landowners in the inventory of rare, native plant species and proper environmental stewardship techniques including Best Management Practices. The Conservation District would only work with private landowners if landowners choose to voluntarily enroll in the program.

RECOMMENDATION: The program promotes better coastland management of fragile shorelines within Charlevoix County and can offset some of the environmental impacts from development on coastline communities. The program is strictly voluntary and aligns with the City's efforts to preserve and protect our shorelines promoting healthy ecosystems. We recommend Council make a motion to direct Staff to submit a support letter for the Charlevoix Conservation District's Coastal Zone Management Grant.

Private Lands Stewardship of Rare Northern Lake Michigan Coastal Species

PROPOSED PROJECT SUMMARY: No local, state, or federal program currently exists to assist private landowners to identify that their coastal Great Lakes shoreline property may be the site of globally rare endemic plant species. Charlevoix County will develop a model through education with private property owners and voluntary cooperative conservation agreements to address this issue. The very beauty of Lake Michigan makes for rapid development of coastal areas which further stresses imperiled species. Numerous threatened and endangered plant species have been documented in Charlevoix County – many located on private property. These occurrences reside in The Michigan Natural Features Inventory (MNFI) database, Biotics, however they are not public data and individual landowners may not know they have them on their property. Unless private property owners are able to identify that they have threatened and endangered plant species on their property and learn to appreciate their value, there is no mechanism at the local level to maintain these rare species along the Lake Michigan shoreline. Private landowners will benefit by receiving educational information on identification and the importance of these plants, which are iconic to the Great Lakes coastal areas. Fostering environmental stewardship through the development of threatened and endangered plant species fact sheets, providing best management practices for maintaining these rare species and utilizing voluntary cooperative conservation easements will help conserve and protect them from unintentional removal or damage due to residential building and road or culvert placement. A cooperative partnership between private land owners and governmental entities is the only mechanism to provide meaningful conservation of these iconic Great Lakes plant species.

DETAILED PROJECT DESCRIPTION: MNFI has documented 17 federally and state threatened and endangered plant species located on public and private property in Charlevoix County. All Lake Michigan coastal shoreline owners within Charlevoix County will be sent a booklet identifying these rare species *that may be found* on their property. It will offer identification tips, rationale as to their significance, best management recommendations, and a suite of voluntary measures developed through a collaboration with the USFWS. Lake Michigan shoreline property owners will then have an increased awareness that threatened and endangered plant species which may exist on their shoreline and will be given tools to decrease the chance of degrading this natural resource.

Coastal habitat: Including the Beaver Island Archipelago, there are 164 miles of Great Lakes shoreline in Charlevoix County. This ecologically unique coastal area provides vital habitat to many threatened and endangered species and species of special concern. Approximately 23 miles of Lake Michigan shoreline on the mainland and the islands in the Beaver Island Archipelago include 77 square miles of land area and 141 miles of Great Lakes shoreline. This coastal area is designated as an Important Birding Area, provides significant habitat for neo-tropical migratory songbirds, and serves as an important fish spawning and nursery area.

Coastal Water Quality: Federally and state threatened and endangered plant species and state species of concern are iconic to the Great Lakes coastal areas. The presence of these globally rare species is an indicator of coastal health. Michigan Monkey flower has been found on Beaver Island, one of only twelve locations in

Private Lands Stewardship of Rare Northern Lake Michigan Coastal Species

the entire state. Increasing awareness on the significance of these rare species will help conserve and protect them.

Coastal Community Development: This initiative will serve as a model for other Michigan counties to assist in the development of vibrant and resilient coastal communities through education and outreach. Providing protection of our sensitive coastal resources and biologically diverse ecosystems through a collaborative effort of private, county, state and federal agencies will ensure success. No one agency can achieve this objective alone; for these species to persist it will require groups working together.

Fostering environmental stewardship by raising awareness, providing educational material and management recommendations and utilizing voluntary cooperative conservation agreements with property owners will help protect threatened and endangered plant species from unintentional removal or damage due to residential building and road or culvert placement. It will also benefit the County's economy through effective protection for future research and increased appreciation by the public of these rare plants.

This initiative is consistent with applicable local land use plans, development plans, recreation plans and zoning. Unless property owners are able to identify they have threatened and endangered plant species on their property and understand management recommendations the loss of these rare species is inevitable. Developing and utilizing voluntary cooperative conservation agreements, follows on the success of the initiative to manage Invasive Phragmites in Charlevoix County.

KEY PROJECT TASKS:

1. Using information already at hand, all existing occurrences of federally threatened and endangered plant species will be documented for Charlevoix County. Working with the County GIS Department and MNFI, a Great Lakes coastal overlay map showing the likelihood of occurrence of threatened and endangered plant species will be produced and coordinated with private property owners. MNFI will conduct a survey on the status of known threatened and endangered species and species of state concern listed in Charlevoix County. Private lands will be surveyed where permission has been granted.
2. The Charlevoix Conservation District will develop a confidential data base of current property owners.
3. Hold workshops with the assistance of LTBB and MNFI (one on the Island, one on the mainland) for Great Lakes shoreline owners and township officials to learn identification of the plants and provide an overview of the threatened and endangered plant initiative and suite of management assistance options.
4. The Charlevoix Conservation District with the assistance of the USFWS, will develop a voluntary cooperative conservation agreement with private property owners. The Conservation District will produce and publish a booklet on the threatened and endangered plant species already documented to be found in Charlevoix County, providing information on each (17 currently listed). Additional identified sites will be forwarded to MNFI by the private property owner. QR codes will be placed on educational materials.
5. Unfold a media blitz on the initiative and hold informational sessions with coastal property owners. Compile property owner responses received. Private property owners with a high likelihood of occurrence

Private Lands Stewardship of Rare Northern Lake Michigan Coastal Species

of threatened and endangered plant species will be contacted and provided with information on voluntary options for management on their shoreline.

6. An “app” will be developed to improve threatened and endangered plant species identification and provide additional management recommendations that will be updated through the Charlevoix Conservation District web site.
7. Outreach and publicity regarding the initiative will take place using social media, regional newspapers, and county publications.

SCHEDULE FOR COMPLETION:

Jan-March 2014: Work with County GIS Dept/MNFI to develop a likelihood of coastal occurrence sites map, including additional information provided by local sources. Work with USFWS on voluntary cooperative conservation agreement. **Outcome:** mechanism to ensure property owners are aware of the threatened and endangered plant species that may occur on their property. **Deliverable:** Likelihood of occurrence map with private property owner database. Develop Smartphone app, create QR codes for printed materials.

April-June 2014: Develop threatened and endangered plant management recommendations; Survey status of known threatened and endangered species and species of state concern. **Outcome:** Increasing public awareness and at the township level, providing educational materials for site reviews, avoiding unintentional damage. **Deliverable:** Develop threatened and endangered plant management recommendations. Complete USFWS voluntary cooperative conservation agreement.

July-Sept. 2014: Produce and publish booklet on threatened and endangered plant species found in Charlevoix County. Hold local workshops for private landowners and township/county officials to: learn the ID of plants, make suggestions for site reviews, and provide an overview of the threatened and endangered initiative and the voluntary suite of options. With the assistance of LTBB and MNFI one workshop will be held on Beaver Island, another on the mainland. Contact by mail, private property owners with suspected occurrences; Begin media blitz of program and host informational sessions with coastal property owners. Compile shoreline property owner responses, update data base. **Outcome:** Contacting and providing property owners with management information and voluntary measures they could implement to protect rare coastal species. **Deliverable:** Voluntary cooperative conservation agreement acceptance by private property owners, develop informational brochure of already documented threatened and endangered plant species in Charlevoix County. Media blitz. Educational workshops.

Oct-Dec. 2014: Document and review all parcels with known threatened and endangered plant occurrences and cross-reference with returned cooperative conservation agreements. Evaluate percentage of acceptance. Fine-tune the Smartphone app developed to improve threatened and endangered plant species identification and provide management recommendations. **Outcome:** Updated map of occurrence sites with MNFI. **Deliverable:** Document number of voluntary cooperative agreements entered into with USFWS.

Private Lands Stewardship of Rare Northern Lake Michigan Coastal Species

Jan – March 2015: Submit written review of the coastal threatened and endangered plant initiative to supporting organizations, partners and agencies with recommendations. Roll-out the Smartphone app.

Outcome: Update supporting partners of threatened and endangered plant occurrences including status survey results. **Deliverable:** Evaluation of private property owners assistance with documenting and management of rare coastal plant species.

LOCAL SUPPORT:

The Beaver Island Association has been instrumental gathering support from private property owners and township officials. The Preservation Association of Beaver Island supports the initiative as it will enhance public knowledge and appreciation for private management options and provide for the preservation of these species. The Community Center located at the heart of the harbor is perfect for providing environmental information and training. The Little Traverse Bay Band of Odawa Indians is interested in regards to culturally significant plants found in Charlevoix County.

Scott Hicks, stated the USFWS had wanted to do something similar helping to conserve Pitcher's thistle, and offered his assistance developing the landowner agreement. He noted this initiative is a great cooperative model that could be of value to any other county!

MDNR supports the initiative as it expands protection of threatened and endangered plant species on private property. The Nature Conservancy (including the UP) supports the initiative, as an unfortunate accident that happened in the UP could have been avoided if such a proposed program had existed. The Little Traverse Conservancy supports the initiative whereas they have Preserves with ecologically sensitive areas and welcome the management assistance. CMU which has a biological station and Great Lakes Research Institute on Beaver Island, supports the initiative as a proactive approach to ensure the continuation of these species as a source for current and future research.

PUBLIC INVOLVEMENT:

Mass mailings to property owners

Workshops sessions provided

Produce and publish booklet on Threatened and endangered plant species in Charlevoix County

Volunteer training provided

Voluntary Cooperative Agreement Participation

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve a License Agreement and Bill of Sale for Telecommunications Tower at Mt. McSauba

DATE: March 18, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS: 1. Bill of Sale
2. License Agreement

BACKGROUND INFORMATION: In December of 2012, a License Lease Agreement with COPESD/PACE Communications expired. COPESD currently owns the tower and does not feel there is a need to continue using the tower. They are using fiber optic lines for the school district but would like to retain the right of access to the tower in the future. They have offered to sell the tower to the City for \$2,500, a reduced amount based upon continued right of access.

I have worked with consultant John Childs on determining a reasonable value for the tower considering age and height of tower. We feel \$2,500 is a reasonable price for the tower especially with the projected annual lease revenues the City will receive by renting tower to a local radio station.

To address the continued right to access the tower by COPEDS, Jim Young has drafted a Telecommunication Site Access License Agreement. Initial term of the agreement is 20 years with a renewal clause if both City and COPEDS agree to renew. The City is not obligated to repair tower if damaged by fire or other casualty.

RECOMMENDATION: Contingent upon City Manager and City Attorney approval of final legal language, City Council makes a motion to Approve Tower Bill of Sale and Telecommunications Site Access License Agreement with COPESD.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that CHEBOYGAN-OTSEGO-PRESQUE ISLE INTERMEDIATE SCHOOL DISTRICT BOARD OF EDUCATION (COPESD), a public body corporate and intermediate school district, whose address is 6075 Learning Lane, Indian River, Michigan 49749, does, hereby convey to the CITY OF CHARLEVOIX (the City), whose address is 210 State Street, Charlevoix, Michigan 49720, its assigns or successors all interest of COPESD in a cell tower, adjacent building and all appurtenances to either structure (collectively, the cell tower components) located as described below. In consideration of this conveyance, the City shall pay COPESD the sum of \$2,500. The cell tower components generally consist of, but are not limited to, a 8' x 12' cement block building with electric, heat, air conditioning and lights; a 90' solid steel leg, with a 4' width face extending to 3' width face at the top, self support communications tower; and the tower has 2 torque arms for extra support and stabilization from twist and is also guyed at the torque arms to an 80% guy radius. The cell tower components are located at Mt. McSauba on land owned by the City and are in an area described as follows:

In the Township of Charlevoix, County of Charlevoix, and State of Michigan, to-wit:

Commencing at a point 1438.30 feet West and 291.74 feet North of the Southeast corner of Section 14, Town 34 North, Range 8 West; thence South 45°55' West 179.54 feet; thence North 44°05' West 15 feet; thence North 45°55' East 179.54 feet; thence South 44°05' East 15 feet to the point of beginning, being a part of Government Lot 2, Section 14, Town 34 North, Range 8 West.

This conveyance terminates any interest that COPESD has in the cell tower components regardless of whether that interest comes from a lease, license agreement or any other type of formal or informal agreement. COPESD warrants that this conveyance of said property, goods and chattels hereby made to the City, its assigns and successors, is free from any claim or interest of any other person or entity. Nothing in this document shall prohibit the City and COPESD from executing a new license agreement.

Dated this ____ day of March, 2013.

CHEBOYGAN-OTSEGO-PRESQUE ISLE
INTERMEDIATE SCHOOL DISTRICT BOARD OF
EDUCATION (COPESD), a public body corporate
and intermediate school district

By: _____
Mary Vratanina

Its: Superintendent

STATE OF MICHIGAN
COUNTY OF CHEBOYGAN

DRAFT

Telecommunication Site Access License Agreement

DRAFT

LICENSOR: City of Charlevoix
210 State Street
Charlevoix, Michigan 49720

LICENSEE: insert full name
Insert address

FACILITY LOCATION: Mount McSauba Charlevoix, Michigan 49720

1. **LICENSE.** Licensor does hereby grant to Licensee a revocable non-exclusive license for the sole purposes of (a) installing, maintaining and operating telecommunications equipment, which will be used only by Licensee, and (b) accessing the telecommunications terminal facility located at the Facility location shown above. Licensee accepts the above-described License for access to said facility for the aforesaid purposes, subject to the terms and conditions set forth herein.
2. **TERM.** The initial term of this License Agreement shall be twenty (20) years from its effective date, but such term shall automatically renew for successive terms of twenty (20) years each thereafter unless Licensee gives written notice of renewal to the Licensor no later than ninety (90) days prior to the end of the initial term or any extension term hereof. In addition, this License Agreement shall terminate upon the occurrence of one of the following: (a) voluntary termination of this License Agreement by Licensee; (b) the inability of Licensor, as mandated by law, to own or allow the presence or operation of telecommunication devices at the Facility; the removal or alteration of the cell tower at the Facility location as required by law; or (c) the destruction of or damage to any portion of the Facility, regardless of causation, which renders the Facility unusable for any of the intended purposes of this License Agreement. Nothing in this agreement shall prohibit the parties from extending or revising this agreement under such terms as shall be acceptable to all parties; provided, however, any extension or revision shall be in a document which has been signed by all of the parties.
3. **LICENSE FEE.** Licensee was the prior owner of the cell tower, building and appurtenances (except for telecommunications equipment owned by other users of the cell tower). Licensee sold these items to Licensor for less than fair market

DRAFT

value and also in anticipation of this License Agreement. Accordingly, there is no fee payable under this License Agreement.

4. **OPERATIONAL PROVISIONS.** The Licensor shall cooperate with Licensee to coordinate efficient collocation of the Equipment owned by each of them and promptly to resolve any interference issues that may arise on account of the presence of multiple operators. Licensee shall be solely liable for maintenance, repair and/or replacement or enlargement of its Equipment, provided that the Licensor shall be responsible for providing electric power to Licensee s Equipment at the sole cost and expense of the Licensor.
5. **EQUIPMENT COMPATIBILITY.** If Licensee elects to install any equipment on the cell tower at the Facility, Licensor or Licensor's designated representative shall have sole right initially and during the Term of this License Agreement to: (a) determine the location of the Licensee's Equipment at the Facility; (b) approve the size, type and quality of the Licensee's Equipment, including any and all electrical therefore, and any repairs or replacements thereto, which approval shall not be unreasonably withheld; (c) require Licensee to take whatever action is reasonably necessary, including removal of Equipment, to eliminate objectionable interference by Licensee's Equipment with Equipment of any other Licensee at the Facility, by providing thirty (30) days written notice of such requirements to Licensee. All transmitters shall be equipped with any isolators, cavities, filters, or other devices as shall be deemed necessary by Licensor, within thirty (30) days after written notification by Licensor of the need therefore, to minimize spurious radiation, intermodulation, and other interference, and in conformance with generally accepted good engineering practices. Licensor assumes no liability whatsoever for any action or omissions pursuant to this paragraph.
6. **EXEMPTION FROM LIABILITY.** This License Agreement is made with the express understanding that whenever Licensor, whether prior to or during the term of this License Agreement, and whether voluntary or required hereunder, to make any approval, representation or requirement regarding Licensee's Equipment, including, but not limited to, location, placement, compatibility, electromagnetic interference, repairs, replacements, modifications or alterations thereto, that Licensor make absolutely no warranty, express or implied, in law or in equity, as to the merchantability or fitness for any particular purpose of Licensee's Equipment and Licensee acknowledges that he is not relying on Licensor's or the City's skill or judgment to select or furnish any of Licensee's Equipment, whether approved or required by Licensor, and that there are absolutely no warranties made by Licensor regarding Licensee's Equipment, or any replacements, repairs, modifications, or alterations thereto of whatever nature. Specifically, and without limiting the foregoing, Licensor shall have no liability to Licensee for any loss or damage due to personal injury, property damage, libel or slander, or imperfect or unsatisfactory communications

experienced by Licensee for any reason whatsoever. In no event shall Licensor ever be liable to Licensee for special, indirect, or consequential damages, including, but not limited to, lost profits, lost business, lost customers, damage to business reputation, or lost business opportunities.

7. **INSURANCE.** Prior to the installation of Licensee's Equipment at the Facility, and thereafter at all times during the Term of this License Agreement shall obtain and maintain insurance coverage satisfactory to the Licensor, with Licensor named as an additional insured, pertaining to the Licensee's installation and operations at the Facility, including the acts and omissions of the Licensee, its agents, employees, contractors, said insurance to provide, at a minimum, the following coverage's: One Million Dollars aggregate; (ii) Bodily Injury and Property Damage-One Million Dollars each occurrence; One Million Dollars aggregate; and, (iii) Workers Compensation Insurance covering all persons employed, directly or indirectly, in connection with any work performed by Licensee or any work authorized by this License Agreement – As required by laws of the state in which the Facility is located. Licensee shall provide certificates evidencing said required insurance coverage to Licensor upon request.
8. **REGULATORY REQUIREMENTS.** Prior to the installation of any of Licensee's Equipment at the Facility, and at all times while Licensee's Equipment is installed at the Facility, Licensee's shall furnish to Licensor satisfactory evidence that Licensee has the full power and authority from the Federal Communications Commission, or from any other federal, state, and/or local agency or agencies having jurisdiction over the installation and operation of Licensee's Equipment, to install and operate its Equipment at the Facility.
9. **TERMINATION & EQUIPMENT.** Upon any termination or expiration of this License Agreement, Licensee shall immediately arrange with Licensor for the removal of Licensee's Equipment from the Facility and the repair of any damage to the Facility caused by or as a result of Licensee's Equipment, all at Licensee's expense. In the event that Licensee shall hold over after the termination date of this License Agreement, this shall constitute a default. Upon the occurrence of such a default, Licensor shall have the right to move, store and all equipment of Licensee that is located at the Facility location. Licensee shall reimburse Licensor for all costs related to the removal, storage and sale of the Licensee's Equipment. Licensor may, but is not required to sell such equipment.
10. **LICENSOR'S REPRESENTATIONS.** Licensor represents to Licensee that Licensor has full power and authority to enter into this License Agreement and to perform all of its undertakings as required hereunder. Licensor agrees that, during the Term of this License Agreement that Licensee shall be permitted continuous twenty-four (24) hour access to Licensee's Equipment for the purpose of maintenance and repairs thereto, subject to any and all rules and

regulations which may be specified in writing to Licensee from time to time by Licensor.

11. **LICENSEE'S REPRESENTATIONS.** Licensee represents to Licensor that Licensee has full power and authority to enter into this License Agreement in accordance with all of its terms and that Licensee's Equipment will comply, during the term of this License Agreement, with all applicable national, state and local statutes, ordinances and laws, including by way of example and not limitation, fire and electrical codes, and all rules and regulations which may be specified in writing from time to time by Licensor.
12. **INDEMNIFICATION.** Being a public entity, licensee shall have no liability to the Licensor for any loss or damage due to personal injury or property damage except to the extent authorized by law. Without limiting the foregoing, Licensor shall have no liability to Licensee or any other person for any loss or damage due to personal injury, property damage, libel or slander, or imperfect or unsatisfactory communications experienced by the Licensee for any reason whatsoever. Licensee shall hold Licensor harmless from any liability incurred by Licensor proximately caused by any act or omission of Licensee, its employees or agents.
13. **FIRE OR OTHER CASUALTY.** If the Facility becomes unusable due to fire or other casualty, and the Licensee's Equipment becomes inoperable as a result thereof, either Licensee or Licensor may elect to terminate this License Agreement upon thirty (30) days written notice to the other, such election to be made within fifteen (15) days after the fire or other casualty. In the event that neither Licensee nor Licensor elects to terminate this License Agreement within such fifteen (15) day period, then Licensor agrees to have the Facility repaired, restored, or rehabilitated at no expense to Licensee within one hundred twenty (120) days after possession of the damaged premises can be obtained and reconstruction or repairs undertaken. During such period that the Facility shall be unusable, all monthly charges due hereunder shall be abated on a per diem basis. If the aforementioned work is not substantially completed within the one hundred twenty (120) day period, either party can terminate this License Agreement as of the day of the fire or other casualty by serving written notice upon the other party not later than one hundred thirty (130) days after possession of the injured premises can be obtained and reconstruction or repairs undertaken. In the event of the termination of this License Agreement pursuant to this paragraph, all Monthly License Fees and other charges due hereunder shall be apportioned on a per diem basis and paid through the date of the fire or other casualty.
14. **SERVICE OF WRITTEN NOTICE.** All notices required hereunder to be served on a party shall be in writing. They shall be deemed served for the purpose of this License Agreement, either by personal delivery on a representative of the

party authorized in writing to receive such notices, or by mailing by certified or registered mail, postage prepaid, to the address set forth at the beginning of this License Agreement, in which case the date of the mailing shall be the date on which said notice is deemed served. Licensor or Licensee may, from time to time, designate any other address for this purpose by written notice to the other party. The failure or refusal of either party to accept delivery of any written notice given shall be deemed to be a waiver of services of the written notice by the refusing party and no further attempt at service of said written notice shall be required.

15. **CONTRACT.** The terms and conditions of this License Agreement are understood and agreed to be contractual and not a mere recital. The paragraph headings used throughout this License Agreement are provided for reader convenience only, and shall not be controlling in the interpretation of this License Agreement.
16. **ENTIRE AGREEMENT.** This License Agreement constitutes the entire understanding between the parties hereto and shall supersede all prior offers, negotiations and agreements between the parties relative to the subject matter contained herein. Licensee represents that there are no understandings, representations, or promises of any kind that have been made by Licensor to induce the execution of this License Agreement except as expressly set forth in writing in this License Agreement.
17. **INVALID PROVISION.** The invalidity or unenforceability of any paragraph or paragraphs, or subparagraph of this License Agreement shall not affect the viability of enforceability of the remainder of this License Agreement or the remainder of any paragraph or subparagraphs; and this License Agreement shall be construed in all respects as if any invalid or unenforceable paragraph or subparagraphs were omitted.
18. **GOVERNING LAW AND VENUE.** This License Agreement shall be construed in accordance with, and subject to, the laws of the State of Michigan. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this License Agreement or any provision thereof shall be instituted only in any court of competent jurisdiction in the State of Michigan.
19. **NO LANDLORD-TENANT RELATIONSHIP.** It is expressly agreed and understood that this License Agreement shall not operate or be construed to create the relationship of landlord and tenant between Licensor and Licensee under any circumstances whatsoever.
20. **ASSIGNMENT.** This License Agreement, including any and all rights hereunder, may not be assigned, pledged, or otherwise disposed of by Licensee.

- 21. **SUCCESSION.** This License Agreement is binding upon the parties hereto and shall be binding upon their successive heirs, administrators, successors and assigns.
- 22. **AMENDMENT.** This License Agreement may not be changed, modified, amended or altered, except by an agreement in writing and signed by all of the parties to such change, modification, amendment or alteration.
- 23. **NORMAL COURSE OF BUSINESS.** This License Agreement has been entered into between Licensor and Licensee in the normal course of business.
- 24. **EFFECTIVE DATE.** This License Agreement shall become effective on the date when the last of the parties executes this document.

IN WITNESS WHEREOF, the parties hereto have executed this Telecommunication Site Access License Agreement on the dates shown below.

WITNESS:

CITY OF CHARLEVOIX

By: _____

Carol A. Ochs
Its: City Clerk

Norman L. Carlson, Jr.
Its: Mayor

ADD DATE

WITNESS:

COPESD

By: _____

Its: XXX

Acknowledged before me in Cheboygan County, Michigan, on this _____ day of March, 2013 by Mary Vratanina, Superintendent of Cheboygan-Otsego-Presque Isle Intermediate School District Board of Education, a Michigan public body corporate and intermediate school district, for the board.

Notary Public:
Cheboygan County, Michigan
My Commission Expires:

Drafted by: James G. Young, *Of Counsel*
Young, Graham, Elsenheimer & Wendling, P.C.
P.O. Box 398
Bellaire, Michigan 49615

CHARLEVOIX CITY COUNCIL

AGENDA ITEM

AGENDA ITEM TITLE: Consideration to Approve a Five-Year Telecommunications Site Access License Agreement with WCCW Radio, Inc.

DATE: March 18, 2013

PRESENTED BY: Rob Straebel

ATTACHMENTS: Telecommunication License Agreement

BACKGROUND INFORMATION: This lease agreement expired in December of 2012. WCCW would like to continue leasing the tower and is requesting the City approve attached telecommunication license agreement. The license agreement initial term is for five years with a renewal clause for another five years if both parties agree to the extension. The agreement has been increased by \$1,500 (\$25 per month for five years) and includes a CPI increase each year according to the U.S. Bureau of Labor Statistics. Annual revenues from the agreement amount to \$6,885.60. Yearly tower lease revenues offset some of the costs of operating Mt. McSauba and are an important revenue stream for ski hill operation.

RECOMMENDATION: Motion to Approve Telecommunication Site Access License Agreement with WCCW Radio, Inc.

Telecommunication Site Access License Agreement

LICENSOR: City of Charlevoix
210 State Street
Charlevoix, Michigan 49720

LICENSEE: WCCW Radio Inc.
Ross Biederman, President
314 East Front Street
Traverse City, Michigan 49684

**FACILITY
LOCATION:** Mount McSauba
45-18-36, 85-15-23.9
Charlevoix, Michigan 49720
Tower Number 1021179

1. **LICENSE.** Licensor does hereby grant to Licensee a revocable non-exclusive right of access to the telecommunications terminal facility located at the Facility Address shown above, for the purpose of installing, maintaining and operating the telecommunications equipment described in Schedule A attached hereto and expressly incorporated herein, and Licensee accepts the above-described License for access to said facility for the aforesaid purposes, subject to the terms and conditions set forth herein and in Schedule A, attached hereto.
2. **TERM.** The Initial Term of this License Agreement shall be for a period of **Sixty (60)** months commencing on January 1, 2013. This License Agreement shall renew automatically for an additional term of Sixty (60) months unless either party gives a written Notice of Non-Renewal to the other party not less than 30 days prior to the end of the Initial Term. Nothing in this lease shall prohibit the parties, including the City of Charlevoix, from extending or revising this lease under such terms as shall be acceptable to all parties; provided, however, any extension or revision shall be in a document which has been signed by all of the parties.
3. **LICENSE FEE.** During the first year of the term of this License Agreement, the Monthly License Fee to be paid by Licensee to the Licensor shall be **\$573.80**, which shall be due and payable on the first day of each calendar month during and throughout the Term of this License Agreement. The Licensee shall also reimburse the Licensor for all attorney fees incurred by the Licensor relating to the preparation of this License Agreement..

4. **ESCALATION.** If the Term of this License Agreement exceeds one (1) year, after the first year of this License Agreement, and commencing in the first month of the second year of the Term hereof, and on every one (1) year anniversary date provided for under the terms of this License Agreement, the Monthly License Fee shall be adjusted in proportion to any increase only, if any, in the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, U.S. Cities Average ("CPI-U"), or its successor. Thereafter, said newly adjusted amount shall be the Monthly License Fee provided and payable as indicated herein.

5. **PAYMENTS.** Payment of any Monthly License Fee, or any other charge due hereunder shall be made by cash or business check in United States funds made payable to the Licensor (City of Charlevoix) and delivered personally or mailed, postage prepaid, to the Licensor at the following address:

City of Charlevoix
210 State Street
Charlevoix, Michigan 49720

6. **EQUIPMENT COMPATIBILITY.** Licensor or Licensor's designated representative shall have sole right initially and during the Term of this License Agreement to: (a) determine the location of the Licensee's Equipment at the Facility; (b) approve the size, type and quality of the Licensee's Equipment, including any and all electrical therefore, and any repairs or replacements thereto, which approval shall not be unreasonably withheld; (c) require Licensee to take whatever action is reasonably necessary, including removal of Equipment, to eliminate objectionable interference by Licensee's Equipment with Equipment of any other Licensee at the Facility, by providing thirty (30) days written notice of such requirements to Licensee. All transmitters shall be equipped with any isolators, cavities, filters, or other devices as shall be deemed necessary by Licensor, within thirty (30) days after written notification by Licensor of the need therefore, to minimize spurious radiation, intermodulation, and other interference, and in conformance with generally accepted good engineering practices. Licensor assumes no liability whatsoever for any action or omissions pursuant to this paragraph.

7. **EXEMPTION FROM LIABILITY.** This License Agreement is made with the express understanding that whenever Licensor, whether prior to or during the term of this License Agreement, and whether voluntary or required hereunder, to make any approval, representation or requirement regarding Licensee's Equipment, including, but not limited to, location, placement, compatibility, electromagnetic interference, repairs, replacements, modifications or alterations thereto, that Licensor make absolutely no warranty, express or implied, in law or in equity, as to the merchantability or fitness for any particular purpose of Licensee's Equipment and Licensee acknowledges that he is not relying on

Licensors or the City's skill or judgment to select or furnish any of Licensee's Equipment, whether approved or required by Licensor, and that there are absolutely no warranties made by Licensor regarding Licensee's Equipment, or any replacements, repairs, modifications, or alterations thereto of whatever nature. Specifically, and without limiting the foregoing, Licensor shall have no liability to Licensee for any loss or damage due to personal injury, property damage, libel or slander, or imperfect or unsatisfactory communications experienced by Licensee for any reason whatsoever. In no event shall Licensor ever be liable to Licensee for special, indirect, or consequential damages, including, but not limited to, lost profits, lost business, lost customers, damage to business reputation, or lost business opportunities.

8. **INSURANCE.** Prior to the installation of Licensee's Equipment at the Facility, and thereafter at all times during the Term of this License Agreement shall obtain and maintain insurance coverage satisfactory to the Licensor, with Licensor named as an additional insured, pertaining to the Licensee's installation and operations at the Facility, including the acts and omissions of the Licensee, its agents, employees, contractors, said insurance to provide, at a minimum, the following coverage's: One Million Dollars aggregate; (ii) Bodily Injury and Property Damage-One Million Dollars each occurrence; One Million Dollars aggregate; and, (iii) Workers Compensation Insurance covering all persons employed, directly or indirectly, in connection with any work performed by Licensee or any work authorized by this License Agreement – As required by laws of the state in which the Facility is located. Licensee shall provide certificates evidencing said required insurance coverage to Licensor upon request.
9. **REGULATORY REQUIREMENTS.** Prior to the installation of any of Licensee's Equipment at the Facility, and at all times while Licensee's Equipment is installed at the Facility, Licensee shall furnish to Licensor satisfactory evidence that Licensee has the full power and authority from the Federal Communications Commission, or from any other federal, state, and/or local agency or agencies having jurisdiction over the installation and operation of Licensee's Equipment, to install and operate its Equipment at the Facility.
10. **TERMINATION.** Upon any termination or expiration of this License Agreement, Licensee shall immediately arrange with Licensor for the removal of Licensee's Equipment from the Facility and the repair of any damage to the Facility caused by or as a result of Licensee's Equipment, all at Licensee's expense. In the event that Licensee shall hold over after the termination date of this License Agreement, this shall constitute a default. The Monthly License Fee payable hereunder during any calendar month or fraction thereof that Licensee shall hold over after the termination of this License Agreement shall be equal to three times the Monthly License Fee that was due and payable during the calendar month immediately preceding the calendar month of the termination of this License

Agreement. If, at the time of expiration or termination of this License Agreement, Licensee shall owe any monetary amount to Licensor arising out of, as a result of, or under this License Agreement, this License Agreement shall survive the termination or expiration, but only with regard to and until all monetary amounts due and payable by Licensee to Licensor shall have been paid in full.

11. **LICENSOR'S REPRESENTATIONS.** Licensor represents to Licensee that Licensor has full power and authority to enter into this License Agreement and to perform all of its undertakings as required hereunder. Licensor agrees that, during the Term of this License Agreement that Licensee shall be permitted continuous twenty-four (24) hour access to Licensee's Equipment for the purpose of maintenance and repairs thereto, subject to any and all rules and regulations which may be specified in writing to Licensee from time to time by Licensor.
12. **LICENSEE'S REPRESENTATIONS.** Licensee represents to Licensor that Licensee has full power and authority to enter into this License Agreement in accordance with all of its terms and that Licensee's Equipment will comply, during the term of this License Agreement, with all applicable national, state and local statutes, ordinances and laws, including by way of example and not limitation, fire and electrical codes, and all rules and regulations which may be specified in writing from time to time by Licensor.
13. **INDEMNIFICATION.** Licensee shall save, indemnify and hold Licensor harmless from and against any and all loss, cost, damage, expense or liability (direct, consequential or otherwise), occasion by growing out of, arising from or resulting in connection with this License or any act of failure to act by Licensee, its employees, agents, invites or licensees. Without limiting the generality of the foregoing, Licensor shall have no liability to Licensee or any other person for any loss or damage due to personal injury, property damage, libel or slander, or imperfect or unsatisfactory communications experienced by the Licensee for any reason whatsoever.
14. **FIRE OR OTHER CASUALTY.** If the Facility becomes unusable due to fire or other casualty, and the Licensee's Equipment becomes inoperable as a result thereof, either Licensee or Licensor may elect to terminate this License Agreement upon thirty (30) days written notice to the other, such election to be made within fifteen (15) days after the fire or other casualty. In the event that neither Licensee nor Licensor elects to terminate this License Agreement within such fifteen (15) day period, then Licensor agrees to have the Facility repaired, restored, or rehabilitated at no expense to Licensee within one hundred twenty (120) days after possession of the damaged premises can be obtained and reconstruction or repairs undertaken. During such period that the Facility shall be unusable, all monthly charges due hereunder shall be abated on a per diem

basis. If the aforementioned work is not substantially completed within the one hundred twenty (120) day period, either party can terminate this License Agreement as of the day of the fire or other casualty by serving written notice upon the other party not later than one hundred thirty (130) days after possession of the injured premises can be obtained and reconstruction or repairs undertaken. In the event of the termination of this License Agreement pursuant to this paragraph, all Monthly License Fees and other charges due hereunder shall be apportioned on a per diem basis and paid through the date of the fire or other casualty.

15. **SERVICE OF WRITTEN NOTICE.** All notices required hereunder to be served on a party shall be in writing. They shall be deemed served for the purpose of this License Agreement, either by personal delivery on a representative of the party authorized in writing to receive such notices, or by mailing by certified or registered mail, postage prepaid, to the address set forth at the beginning of this License Agreement, in which case the date of the mailing shall be the date on which said notice is deemed served. Licensor or Licensee may, from time to time, designate any other address for this purpose by written notice to the other party. The failure or refusal of either party to accept delivery of any written notice given shall be deemed to be a waiver of services of the written notice by the refusing party and no further attempt at service of said written notice shall be required.
16. **CONTRACT.** The terms and conditions of this License Agreement are understood and agreed to be contractual and not a mere recital. The paragraph headings used throughout this License Agreement are provided for reader convenience only, and shall not be controlling in the interpretation of this License Agreement.
17. **ENTIRE AGREEMENT.** This License Agreement constitutes the entire understanding between the parties hereto and shall supersede all prior offers, negotiations and agreements between the parties relative to the subject matter contained herein. Licensee represents that there are no understandings, representations, or promises of any kind that have been made by Licensor to induce the execution of this License Agreement except as expressly set forth in writing in this License Agreement.
18. **INVALID PROVISION.** The invalidity or unenforceability of any paragraph or paragraphs, or subparagraph of this License Agreement shall not affect the viability of enforceability of the remainder of this License Agreement or the remainder of any paragraph or subparagraphs; and this License Agreement shall be construed in all respects as if any invalid or unenforceable paragraph or subparagraphs were omitted.

19. **GOVERNING LAW AND VENUE.** This License Agreement shall be construed in accordance with, and subject to, the laws of the State of Michigan. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this License Agreement or any provision thereof shall be instituted only in any court of competent jurisdiction in the State of Michigan.
20. **NO LANDLORD-TENANT RELATIONSHIP.** It is expressly agreed and understood that this License Agreement shall not operate or be construed to create the relationship of landlord and tenant between Licensor and Licensee under any circumstances whatsoever.
21. **ASSIGNMENT.** This License Agreement, including any and all rights hereunder, may not be assigned, pledged, or otherwise disposed of by Licensee, directly or indirectly, without the advance written approval of Licensor, which approval shall not be unreasonably withheld.
22. **SUCCESSION.** This License Agreement is binding upon the parties hereto and shall be binding upon their successive heirs, administrators, successors and assigns.
23. **AMENDMENT.** This License Agreement may not be changed, modified, amended or altered, except by an agreement in writing and signed by all of the parties to such change, modification, amendment or alteration.
24. **NORMAL COURSE OF BUSINESS.** This License Agreement has been entered into between Licensor and Licensee in the normal course of business.
25. **CITY APPROVAL.** The City consents to the grant of license described in this License Agreement.
26. **CONTINGENCIES ON CONTRACT EFFECTIVENESS.** This License Agreement shall become effective only on the payment by Licensee of the reimbursement of attorney fees to the City and the one lump sum payment to Licensor as described in paragraph 3, entitled LICENSE FEE.

IN WITNESS WHEREOF, the parties hereto have executed this Telecommunication Site Access License Agreement on this _____ day of March, 2013, but effective as if executed on the Commencement Date shown herein.

WITNESS:

LESSOR/CITY OF CHARLEVOIX

Carol A. Ochs
Its: City Clerk

By: _____
Norman L. Carlson, Jr.
Its: Mayor

WITNESS:

WCCW Radio Inc.

By: _____
Ross Biederman
Its: President