

**AGENDA**  
CITY OF CHARLEVOIX CITY COUNCIL MEETING

**Monday, June 3, 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 – May 20, 2013 Regular Meeting **PG 1-7**
  - B. Accounts Payable Check Register **PG 8-15**
  - C. Payroll Check Register **PG 16-21**
  - D. Canvassers Report **PG 22-25**
- V. **Public Hearings**
  - A. Wastewater Treatment Plant Improvements Project Plan **PG 26**
  - B. Discussion on Design Options for Plaza B in East Park **PG 27**
- VI. **Reports**
- VII. **Requests, Petitions and Communications and Actions Thereon**
  - A. Status Report Regarding Fundraising Efforts for Costs Associated with Fireplace **PG 28**
  - B. Venetian Festival Review **PG 29-33**
  - C. Consideration to Approve Engineering Design and Rate Study Financial Services And a Resolution for a S-2 Grant for Engineering Improvements to the Wastewater Treatment Plant **PG 34-50**
  - D. Purchase of Capacity **PG 51-52**
  - E. Discussion Regarding Requests from Councilmember Campbell **PG 53-62**
  - F. Discussion Regarding Delinquent Payment of Freedom of Information Act (FOIA) Charges **PG 63-69**
  - G. Discussion Regarding the City Clerk Position **PG 70-71**
  - H. Discussion Regarding Restructuring the DDA Director Position **PG 72-74**
- VIII. **Introduction and Initial Actions Relating to Ordinances or to Resolutions That Require Publication or Hearings Prior to Final or Further Action**
- IX. **Resolutions**
  - A. Consideration to Approve a Resolution Supporting the S-2 Grant **PG 38-40**
- 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.

**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Public Hearing: Review and Public Comments Regarding Project Plan for Wastewater Treatment Plant Improvements

**DATE:** June 3, 2013

**PRESENTED BY:** Mark Prein, Prein and Newhoff

**ATTACHMENTS:** Draft Project Plan

**BACKGROUND INFORMATION:** A Public Hearing has been scheduled for June 3 to review and take comments on the Wastewater Treatment Plant Project Plan. The Project Plan was delivered to all Council members on Friday May 24, 2013. Project engineers will make a presentation on the project and comments will be taken during the Public Hearing portion of this agenda item.

Per grant requirements, a full transcription of the agenda item will be completed. Therefore, we will need to identify who is speaking when comments or questions are broached. Any questions will be included and addressed in the final Project Plan report.

**RECOMMENDATION:** Open Public Hearing to solicit comments and questions.

**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Public Hearing Regarding Options for Plaza B

**DATE:** June 3, 2013

**PRESENTED BY:** Mayor Carlson

**ATTACHMENTS:** None

**BACKGROUND INFORMATION:** City Council requested that a Public Hearing be held to solicit ideas for Plaza B.

**RECOMMENDATION:** Open Public Hearing to solicit ideas for Plaza B.

**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Status Report Regarding Fundraising Efforts for Costs Associated with Fireplace

**DATE:** June 3, 2013

**PRESENTED BY:** Shirley Gibson, Councilmember

**ATTACHMENTS:**

**BACKGROUND INFORMATION:** At the last City Council meeting, City Council directed Staff to have an agenda item for an update on fundraising efforts to reimburse the City for costs associated with construction and design of the fireplace.

**1. Initial Construction of Fireplace in 2012**

Drost Landscaping \$10,994.40

Draupeau Masonry \$ 2,500.00

**2. Design Work**

Richard Hitz/Mark Buday \$ 5,882.50

**3. Restocking Fee**

Emmett Brick and Block \$ 1,495.08

Total \$20,871.98

**RECOMMEDATION:** Discussion

**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Venetian Festival Review

**DATE:** June 3, 2013

**PRESENTED BY:** Dan Barron, President of Charlevoix Venetian Festival, Inc.

**ATTACHMENTS:** Letter from Dan Barron dated May 28, 2013  
2013 Tentative Venetian Activities  
Proposed 2013 Venetian Funding Contract  
2013-14 Community Promotion Budget

**BACKGROUND INFORMATION:** Dan Barron, President of Charlevoix Venetian Festival, Inc. has asked to appear before the City Council to review the 2013 Venetian Festival and its planned activities. Mr. Barron is planning to submit the 2013 fireworks application for City review in the next couple of weeks.

The 2013-14 City Community Promotion Budget includes \$12,000 to Charlevoix Venetian Festival, Inc. A copy of the budget page is attached. The Charlevoix Venetian Festival has given the City a proposed contract for Council's consideration seeking the \$12,000 donation. The proposed contract is attached.

**RECOMMENDATION:** If Council desires, pass a motion to authorize the Mayor to sign the 2013 Funding Contract.

# CHARLEVOIX VENETIAN FESTIVAL, INC.

309 Petoskey Avenue

P.O. Box 120

Charlevoix, Michigan 49720

PH 231-547-3872 / FAX 231-547-2977

[www.venetianfestival.com](http://www.venetianfestival.com) Email: [info@venetianfestival.com](mailto:info@venetianfestival.com)

May 28, 2013

"HAND DELIVERED"

Robert Straebel  
City Manager  
City of Charlevoix  
210 State Street  
Charlevoix, Michigan 49720

RE: 83rd Annual Charlevoix Venetian Festival

Dear Rob:

I have enclosed a tentative schedule of proposed Venetian activities relative to the 83rd Annual Charlevoix Venetian Festival. The itinerary and staging of this year's proposed activities is similar to that of the past several years.

I have also enclosed our proposed 2013 Contract with the City, which is similar to our 2012 Contract. We will also promptly submit our 2013 fireworks application, for review and approval by Chief Ivan and the City Council. The fireworks application will also be similar to those of the past several years.

Please see that this matter is placed on the agenda for approval at the next City Council meeting, and otherwise feel free to contact me with any questions or comments.

Sincerely,



Dan Barron  
President

DBB/jlm

Enclosures

RECEIVED

MAY 28 2013

CITY OF CHARLEVOIX

*"pre" & "post" venetian*

**GOLF - JR. GOLF FINALS**  
*Monday, July 20*  
 Begins: July 16, Finals: July 20  
 Carpenters Golf Program, Memorial  
 Reg: Municipal Course

**TENNIS FINALS**  
*Monday, July 20*  
 Begins: July 19, Finals: July 20  
 Youth, Women, Men, Coed, Seniors  
 Reg: City Rec Dept

**GOLF - "CAREY CUP"**  
*Monday, July 20*  
 Begins: To Be Determined  
 Youth, Women, Men & Senior  
 Reg: Municipal Course

*sunday, july 21*

**BEACH BASH BASKETBALL**  
*Lake Michigan Beach, 9:00 a.m.*  
 3-on-3 Tennis  
 Reg: Outdoor - on-site at 9:00 a.m.

**VENETIAN JAM (BIKES, BLADES & BOARDS)**  
*City State Park, 3:00 p.m.*  
 Open and Underclass Levels  
 Reg: On-site at 2:00 p.m., \$15 fee, "Swag" Prizes

**"WORSHIP ON THE WATER"**  
*On-shore Boat, 7:00-10:00 p.m.*  
 Sponsored by the Charlevoix Ministerial Assn.  
**HARVEST BARN WORSHIP BAND**  
 Gospel/Worship - East Jordan, MI

*tuesday, july 23*

**JR. SAILING REGATTA**  
*Piquette Beach, About End of Beach*  
 Ages 19 and under  
 Reg: Youth Center, on-shore, until 10:00 a.m.

**CROQUET CHALLENGE**  
*Bridge Park, 1:30 p.m.*  
 Fire Dept., Service Club, Youth & Adult  
 Reg: On-site at 1:30 p.m.

**3-ON-3 SOCCER TOURNAMENT**  
*Shawanda Field, 2:30 p.m., Finals: July 27*  
 Youth, High School, Adult, Over 35  
 Reg: City Rec Dept, Pre-reg: \$50, 1 Day of: \$80

**TIKI TENT**  
*East Park, 6:00-11:00 P.M.*  
**JILL JACK**  
 Original Rock/Pop - Detroit, MI

**VENETIAN RHYTHMS**  
*On-shore Boat, 8:00-9:15 p.m.*  
**CHARLEVOIX CITY BAND**

*thursday, july 25*

**KIDS DAY**  
*Lake Michigan Beach, 10:00 a.m. - 3:00 p.m.*  
 Family Fun & Activities: Free & Available  
 Beach Available: \$10 (Schedules Available)

**FOOD CONCESSIONS**  
**VENETIAN MERCHANTS**  
*East Park, 1:00-4:00 p.m.*

**ARNOLD CARNIVAL**  
*On-shore Boat, 11:00 a.m. - 11:00 p.m.*  
 Tickets: \$1.25 each or 20 for \$18  
 Carnival Available: \$15 (Good All Day)

**TIKI TENT**  
*East Park, 6:00-11:00 P.M.*  
**JASON & NICK**  
 Rock/Pop - Antrim County, MI

**VENETIAN RHYTHMS**  
*On-shore Boat, 7:00-10:00 p.m.*  
**THE KARLYNCH BAND**  
 Contemporary Country - Nashville/C.R., MI

**THE FARM**  
 Contemporary Country - Nashville, TN

*saturday, july 27*

**DRENTH MEMORIAL FOOTRACE**  
*Bridge Street, 10:00 a.m. (Run to Street Bands)*  
 Family Mile, 5K & 10K - All Ages  
 Reg: www.venetianfestival.com - or - Michigan Beach, Fri., 4:00-7:00 p.m., Sat., 8:30-9:30 a.m.

**RYAN SHAY MILE**  
*Bridge Street, 10:30 a.m.*  
 Championship Competition by Invitation Only

**STREET PARADE**  
*Bridge Street, 11:00 a.m.*

**FOOD CONCESSIONS**  
**VENETIAN MERCHANTS**  
*East Park, 1:00-4:00 p.m.*

**ARNOLD CARNIVAL**  
*On-shore Boat, 11:00 a.m. - 11:00 p.m.*  
 Tickets: \$1.25 each

**CLUBS, AMMUSEMENT**  
*Sigbee's, Henderson, 12:30-3:00 p.m.*

**VENETIAN RHYTHMS**  
*Bridge Park, 12:15 p.m.*

**PLYMOUTH FIFE & DRUM CORPS**  
 Plymouth, MI

**SAULT STE. MARIE PIPE BAND**  
 Sault Ste. Marie, Canada

**LEAKY TIKIS**  
 On-shore Boat, 12:30-3:00 p.m.

**TIKI TENT**  
*East Park, 6:00-11:00 p.m.*  
 Entertainment: TEA

**VENETIAN RHYTHMS**  
*On-shore Boat, 7:00-10:00 p.m.*

**ACADEMY FOUR**  
 Interlochen Arts Academy, Singer/Songwriters

**KIDS FROM WISCONSIN**  
 Performing Arts Extravaganza - Wisconsin

**VENETIAN LIGHTED BOAT PARADE**  
*On-shore Boat*

**SPECTACULAR HARBOR FIREWORKS**  
*On-shore Boat*

*saturday, july 20*

**AQUAFALOOZA**  
*East Park, 12:30-5:00 p.m.*  
 Beach and Boating Party  
 Entertainment: TEA

**DON MIDDLEBROOK & LIVING SOUL**  
 Band/Tripoli - Lisletts, MI

**VOLLEYBALL TOURNAMENT**  
*City State Park, 12:00 p.m.*  
 6 Member Coed, \$30 per team  
 Reg: City Rec Dept, 231-675-1362

**HORSESHOE TOURNAMENT**  
*East Park, 1:00 p.m.*  
 \$10 per person, Coed, Prizes  
 Reg: On-site at 12:00 p.m.

*monday, july 22*

**VENETIAN SWIM MEET**  
*Community Pool, Thursday 9:15 a.m., Meet 4:00 p.m.*  
 Youth & Adult  
 Reg: Community Pool, Betty Gramstra, 317-40082

**VENETIAN RHYTHMS "SUN SPLASH"**  
*Lake Michigan Beach, 5:00-9:00 p.m.*  
**BATTLE OF THE BANDS**  
 3 Emerging Bands Compete for Cash Prizes

**AUDIO CIRCUS**  
 Rock - Charlevoix, MI

**VENETIAN VISION**  
*On-shore Boat, 7:30 p.m.*  
 Family Night  
 CHARLEVOIX, MI  
 To Be Announced  
 CHARLEVOIX, MI  
 To Be Announced

*wednesday, july 24*

**FOOD CONCESSIONS**  
**VENETIAN MERCHANTS**  
*East Park, 1:00-4:00 p.m.*

**SAILING REGATTA**  
*Lake Charlevoix - Depot Beach*  
 Many Fleets: Personal Boats and Crews  
 Reg: City Rec Dept

**ARNOLD CARNIVAL**  
*On-shore Boat, 5:00 - 11:00 p.m.*  
 \$10 for 10 rides all evening

**TIKI TENT**  
*East Park, 6:00-11:00 p.m.*  
**TOM ZIPP BAND**  
 Rock - Charlevoix, MI

**VENETIAN RHYTHMS**  
*On-shore Boat, 7:00-10:00 p.m.*  
**MOTOR CITY WOMEN & DETROIT EXPRESS**  
 Rhythm & Blues - Detroit, MI

**MITCH RYDER & THE DETROIT WHEELS**  
 Original Rock - Detroit, MI

*friday, july 26*

**FOOD CONCESSIONS**  
**VENETIAN MERCHANTS**  
*East Park, 1:00-4:00 p.m.*

**ARNOLD CARNIVAL**  
*On-shore Boat, 11:00 a.m. - 11:00 p.m.*  
 Tickets: \$1.25 each or 20 for \$18  
 \$20 Available Good All Day

**TIKI TENT**  
*East Park, 6:00-11:00 p.m.*  
**CHRIS MARTIN**  
 Crossover Rock - Charlevoix, MI

**VENETIAN RHYTHMS**  
*On-shore Boat, 7:30-10:00 p.m.*  
**QUEEN CORONATION**  
 ARTWORK AUCTION

**PAUL REVERE & THE RAIDERS**  
 Original 1960's Rock - USA

**UP NORTH BIG BAND**  
*Reg: Beach, 8:00-10:00 p.m.*  
 Swing/Jazz - Charlevoix, MI

**"NIGHT SKY" WORLD CLASS FIREWORKS**  
*On-shore Boat, 9:00-11:00 p.m.*

*friday, july 26*

**TIKI TENT**  
*East Park, 6:00-11:00 p.m.*  
 Entertainment: TEA

**VENETIAN RHYTHMS**  
*On-shore Boat, 7:00-10:00 p.m.*

**ACADEMY FOUR**  
 Interlochen Arts Academy, Singer/Songwriters

**KIDS FROM WISCONSIN**  
 Performing Arts Extravaganza - Wisconsin

**VENETIAN LIGHTED BOAT PARADE**  
*On-shore Boat*

**SPECTACULAR HARBOR FIREWORKS**  
*On-shore Boat*

**83rd Annual**  
*July 20-27, 2013*

MAIN VENETIAN EVENTS  
 RHYTHMS OF VENETIAN  
 VENETIAN GAMES  
 VENETIAN TIKI TENT  
 VARIOUS VENETIAN



**CITY OF CHARLEVOIX  
COMMUNITY PROMOTION BUDGET  
October 31, 2012**

	2009-2010 Actual	2010-2011 Actual	2011-2012 Actual	2012-13 Budget	2012-2013 Est Actual	2013-2014 Proposed
Animal Control	1,000	0	431	500	1,700	2,000
Chamber Commerce Contract Venetian	6,700	6,700	0	6,700	13,400	6,700
City Band	15,000	12,000	15,000	12,000	12,000	12,000
Senior Citizens	4,800	4,800	4,800	4,000	4,800	4,000
Internet Website	5,000	0	0	0	0	0
B.A.S.E.S.	1,966	1,966	1,762	2,000	1,413	2,000
Entrance/Sign Refurbish	3,000	3,000	0	0	0	0
Children's Literature Walk	0	0	0	3,200	0	6,500
Leadership Chx County Grant	0	0	0	1,200	0	0
Service Club Signs - Channel	0	0	0	0	5,000	0
Petunia Weeding	0	0	0	7,000	7,000	0
Charter Promotions	16,000	0	0	0	0	0
Pure Michigan	1,200	1,200	0	0	0	0
Misc	0	0	0	0	0	3,000
	3,798	120	1,670	1,800	160	1,100
	<b>58,464</b>	<b>29,786</b>	<b>23,663</b>	<b>38,400</b>	<b>45,473</b>	<b>37,300</b>

	2009-2010 Actual	2010-2011 Actual	2011-12 Actual	2012-13 Budget	2012-2013 Est Actual	2013-2014 Proposed
General Fund	30.0%	\$17,539	\$8,936	\$7,100	\$11,500	\$17,142
Electric Fund	56.0%	32,740	16,680	13,251	21,500	22,665
Sewer Fund	7.0%	4,092	4,100	1,656	2,700	2,833
Water Fund	7.0%	4,092	4,100	1,656	2,700	2,833
<b>Totals:</b>	<b>100.0%</b>	<b>\$58,464</b>	<b>\$33,816</b>	<b>\$23,663</b>	<b>\$38,400</b>	<b>\$45,473</b>

**CONTRACT**

**THIS CONTRACT** is effective on the \_\_\_\_ day of June, 2013, between the City of Charlevoix, a Michigan home rule city, whose address is 210 State Street, Charlevoix, Michigan 49720 ("City") and the Charlevoix Venetian Festival, Inc., a Michigan nonprofit corporation, whose address is 309 Petoskey Avenue, P.O. Box 120, Charlevoix, Michigan 49720 (the "Festival").

**RECITALS**

- A. Pursuant to MCLA 117.3(j) and Article I, Section 1.6 of the City Charter, the City is authorized to provide for the peace and health and for the safety of persons and property within the City and to expend funds for that purpose.
- B. The Festival will provide numerous activities during the 83rd Annual Charlevoix Venetian Festival, being held between July 20 - 27, 2013.
- C. Except for private donations from businesses and individuals, event registration fees, proceeds from the carnival, similar amusements and food & art concessionaire fees, the Festival charges no fees in connection with the various music entertainment and public activities and entertainment it provides within the City.
- D. The parties desire to act cooperatively in providing the above activities and entertainment to the citizens and visitors in the City.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Contract, the parties hereby agree as follows:

- 1. The City shall pay to the Festival the sum of \$12,000.00.
- 2. The Festival shall use the above money to help defray the expense of the activities and events of the 83rd Annual Charlevoix Venetian Festival.
- 3. The Festival shall charge no fees to spectators or event participants within the City, without the prior approval of the City Manager. The prohibition shall not apply to concessions where items or services (such as food, beverages, merchandise or carnival or amusement rides or activities) are sold, nor shall it apply to fees charged to concession operators, nor to registration fees for participation in athletic events.

**"CITY"  
CITY OF CHARLEVOIX**

Date: June \_\_\_\_, 2013

By: \_\_\_\_\_  
Norman Carlson, Jr., Mayor

**"FESTIVAL"  
CHARLEVOIX VENETIAN FESTIVAL, INC.**

Date: June \_\_\_\_, 2013

By: \_\_\_\_\_  
Daniel B. Barron, President

## CHARLEVOIX CITY COUNCIL

### AGENDA ITEM

**AGENDA ITEM TITLE:** Consideration to Approve Engineering Design and Rate Study Financial Services and a Resolution for a S-2 Grant for Engineering Improvements to the Wastewater Treatment Plant

**DATE:** June 3, 2013

**PRESENTED BY:** Mark Prein, Prein and Newhoff

**ATTACHMENTS:**

1. Letter Dated May 29, 2013 from Mark Prien
2. Resolution Supporting an Application for a S-2 Grant

**BACKGROUND INFORMATION:** The City of Charlevoix and project engineers have been successful in receiving S-2 grant funding to cover 90% of costs for development of the initial Project Plan for improvements to the Wastewater Treatment Plant. These improvements are required through a new discharge permit effective at the end of December, 2015. Grant funding amounted to \$71,000 with the City contributing \$7,100 in matching funds. The City would like to pursue a second S-2 grant for \$910,000 with an additional 10%, or \$9,100. As the grant funding is on a "first come first serve" basis, it behooves the City to pass a resolution in support of a grant application. The scope of work for the second phase of design work will include:

- ❖ Completion of a Preliminary Report
- ❖ Preparation of the Rate Study
- ❖ Selection of Base Bid Equipment/Products
- ❖ Development of Final Design Construction Documents
- ❖ Obtaining MDEQ Construction Permits
- ❖ Bidding Assistance
- ❖ Coordination/Assistance/Management of SRF Loan Requirements

The State has indicated that the engineering design and financial services needs to be approved by the City prior to being included in the S-2 grant application.

The following has been included in past agenda items:

According to new compliance requirements for the City's National Pollution Discharge Elimination System (NPDES) permit for the Wastewater Treatment Plant, the City will need to treat ammonia by the end of 2015. Currently, the plant is not designed for ammonia treatment thereby requiring major improvements to treatment processes to comply with new permit regulations. Additionally, there have not been major upgrades to the treatment plant in a very long time. The City is working with an engineering firm, Prein and Newhoff to design the improvements, develop construction drawings and bid the project. Construction would begin in 2014 with improvement completed by 2015 when new ammonia limits are implemented.

It is important to understand that the project may require bonding or loans with increases in sewer rates paying for annual debt service. We are currently exploring a number of financing options trying to maximize grant dollars and minimizing debt service. There will be substantial increases in sewer rates which will not be well-received by many residents in our service areas- City, Charlevoix and Marion Townships. The actual rate increases will be determined by a User Charge System Analysis that is driven by total project costs. Nevertheless, the City cannot be out of compliance with the new NPDES permit and must make improvements to the plant to address ammonia and other operational issues.

**RECOMMENDATION:** We need City Council to make two motions:

1. Motion to Approve Engineering Design and Rate Study Financial Services with Prein and Newhof;
2. Motion to approve Resolution #\_\_\_\_\_, a Resolution Authorizing a second S-2 Grant Submittal for \$910,000.

May 29, 2013  
2110372

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

RE: Wastewater Treatment Plant  
Engineering Design Services

Dear Mr. Straebel:

In April 2011 the City of Charlevoix received a new National Pollutant Discharge Elimination (NPDES) wastewater treatment plant discharge permit from the State of Michigan. As part of the permit, the State required that the City upgrade the existing facilities to meet new discharge criteria. Through your qualifications based selection process, Prein&Newhof was chosen to assist you with the facilities upgrade. To date we have undertaken the following activities under our master services agreement with the City:

- Discharge Permit Review – Historical Review, MDEQ Inquiry, and Permit Options Summary
- Permit Negotiations (Track I) – Discussion with MDEQ on permit revisions
- Facility Assessment (Track II) – Assessment of Wastewater Treatment Facility (WWTF)
- State Revolving Loan Fund Project Plan – Submittal to request eligibility for low interest loans from the State of Michigan to finance plant upgrades.
- S-2 Planning Grant Application – Grant application seeking 90% grant for reimbursement for Facility Assessment and Project Plan Preparation as described above

The S-2 Planning Grant was approved by the State for project cost of \$71,000. The City's 10% match was \$7,100 with the State contributing \$63,900. Work completed to date which was not eligible for S-2 reimbursement totals \$17,800.

The State Revolving Loan Fund (SRF) project plan will provide a sound preliminary plan for proceeding with improvements to the WWTF that will meet the current and anticipated revised NPDES permit limits (Track I). This plan will be completed and submitted to the State for approval at the end of June 2013.

Following State approval, the City's eligibility for a low interest loan will be ranked and compared to all other applications. Until this ranking is completed, we will not know if the low interest loan from the State will be a timely option for the City. However, there is the opportunity to request another S-2 Grant from the State to cover Design Engineering and Rate Study Financial Services. Similar to the planning grant, the funding program is a 90% grant. Historically this grant application is submitted after the project plan and low interest loan is approved by the State.

Mr. Straebel  
May 29, 2013  
Page 2 of 2

Recently the State has been working to fully allocate S-2 funds prior to the commencement of the new SAW grant program. As a result, the State is now taking S-2 grant applications for design work of pending project plans. As S-2 funding is allocated on a first come basis, and limited funding remains, we recommend that the City submit a Design Engineering and Rate Study Financial Services Grant application. The project plan lists all potential costs of construction. The amount listed in the S-2 grant application should include all anticipated design and rate study costs as if the entire project is to be constructed. The actual amount of services required will not be known until the City selects the final scope of work.

When the project moves forward, we anticipate the work tasks to be:

- Completion of a Preliminary Design Report
- Preparation of the Rate Study
- Selection of Base Bid Equipment/Products
- Development of Final Design Construction Documents
- Obtaining MDEQ Construction Permits
- Bidding Assistance
- Coordination/Assistance/Management of SRF Loan Requirements

The anticipated design and financial services are estimated to cost a maximum of \$910,000.

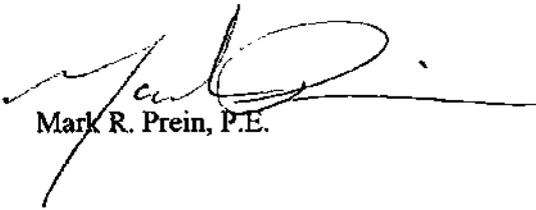
As part of the S-2 grant application process, the State has indicated that the engineering design and financial services needs to be approved by the City prior to being included in the S-2 application. Therefore, we request that the City authorize the Engineering Design and Rate Study Financial services work tasks in the amount up to \$910,000. If the S-2 grant is approved by the State, the City's portion of the scope would be the 10% match, or up to \$91,000.

To maximize the potential for receipt of an S-2 Design grant, we recommend that the City submit an S-2 Application as soon as possible. To minimize the financial risk to the City, we also recommend that the City continue to approve engineering services in phases as work progresses. At this time, no design engineering work task approval is being sought.

If you have any questions related to the matter, please feel free to call me.

Sincerely,

**Prein&Newhof**

  
Mark R. Prein, P.E.

City \_\_\_\_\_ of Charlevoix  
County of Charlevoix

Resolution Authorizing the S2 Grant Agreement

Minutes of the regular meeting of the City Council of the City of Charlevoix  
County of Charlevoix, State of Michigan, (the "Municipality") held on  
\_\_\_\_\_.

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

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

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

WHEREAS, Part 52 (strategic water quality initiatives) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("Part 52"), provides at MCL 324.5204a that the Michigan Finance Authority (the "MFA") in consultation with the Michigan Department of Environmental Quality (the "DEQ") shall establish a strategic water quality initiatives grant program; and

WHEREAS, in accordance with the provisions of 2010 PA 231, which provides grants to assist municipalities in completing loan application requirements under MCL 324.5308 or completing loan application requirements for other sources of financing for sewage treatment works projects, storm water treatment projects or nonpoint source projects; and

WHEREAS, in accordance with the provisions of 1985 PA 227, as amended, Part 52, and other applicable provisions of law, the MFA, the DEQ, and the Municipality that is a grant recipient shall enter into a grant agreement (the "S2 Grant Agreement") that requires the Municipality to repay the grant under certain conditions as set forth in MCL 324.5204a, as amended; and

WHEREAS, the Municipality does hereby determine it necessary to undertake planning, revenue system development, and/or design activities related to a project for which it intends to seek financing for construction; and

WHEREAS, it is the determination of the Municipality that at this time, a grant in the aggregate principal amount not to exceed \$910,000.00 ("Grant") be requested from the MFA and the DEQ to pay for the planning and/or design activities; and

WHEREAS, the Municipality shall obtain this Grant by entering into the S2 Grant Agreement with the MFA and the DEQ.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. \_\_\_\_\_ (*title of the designee's position*), a position currently held by \_\_\_\_\_ (*name of the designee*), is designated as the Authorized Representative for purposes of the S2 Grant Agreement.
2. The proposed form of the S2 Grant Agreement between the Municipality, the MFA and DEQ (attached hereto as Appendix I) is hereby approved and the Authorized Representative is authorized and directed to execute the S2 Grant Agreement with such revisions as are permitted by law and agreed to by the Authorized Representative.
3. The Municipality shall repay the Grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8 percent per year, to the Authority if any of the following conditions occur:
  - (a) the Municipality fails to submit an administratively complete loan application for assistance from the SRF, the SWQIF or other source of financing for the project within 3 years of the Grant award;
  - (b) the project has been identified as being in the fundable range or is approved for funding from another source and the Municipality declines loan assistance for 2 consecutive fiscal years unless the Municipality proceeds with funding from another source; or
  - c) the Municipality is unable to, or decides not to, proceed with constructing the project.
4. The Grant, if repayable, shall be a first budget obligation from the general funds of the Municipality, and the Municipality is required, if necessary, to levy ad valorem taxes on all taxable property in the Municipality for the payment thereof, subject to applicable constitutional, statutory and Municipality tax rate limitations.
5. The Municipality shall not invest, reinvest or accumulate any moneys deemed to be Grant funds, nor shall it use Grant funds for the general local government administration activities or activities performed by municipal employees.
6. The Authorized Representative is hereby jointly or severally authorized to take any actions necessary to comply with the requirements of the MFA and the DEQ in connection with the issuance of the Grant. The Authorized Representative is hereby jointly or severally authorized to execute and deliver such other contracts, certificates, documents, instruments, applications and other papers as may be required by the MFA or the DEQ or as may be otherwise necessary to effect the approval and delivery of the Grant.
7. The Municipality acknowledges that the S2 Grant Agreement is a contract between the Municipality, the MFA and the DEQ.
8. All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution are rescinded.

YEAS:       Members:

NAYS:       Members:

**RESOLUTION DECLARED ADOPTED**

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

\_\_\_\_\_  
Name \_\_\_\_\_ of \_\_\_\_\_, Clerk  
\_\_\_\_\_ of \_\_\_\_\_ County of \_\_\_\_\_



# Michigan Finance Authority

## STATE REVOLVING FUND AND STRATEGIC WATER QUALITY INITIATIVES FUND ("S2") GRANT AGREEMENT

This Grant Agreement ("Agreement") is made as of \_\_\_\_\_ 20\_\_\_\_, among the Michigan Department of Environmental Quality, Resource Management Division (the "DEQ"), the Michigan Finance Authority (the "Authority") (the DEQ and the Authority are, collectively, the "State") and the \_\_\_\_\_, County of \_\_\_\_\_ ("Grantee") in consideration for providing grant assistance to the Grantee.

The purpose of this Agreement is to provide funding for the project named below. The State is authorized to provide grant assistance pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

**The Grantee shall be required to repay the grant made under this Agreement (the "Grant"), within 90 days of being informed by the State to do so, under certain conditions, as set forth in Section XVIII. Program Specific Requirements: S2 Grant.**

Award of a Grant under this Agreement and completion of the activities identified in Exhibit A do not guarantee loan assistance from the State Revolving Fund or Strategic Water Quality Initiatives Fund.

### GRANTEE INFORMATION:

\_\_\_\_\_  
Name/Title of Authorized Representative  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Telephone number  
\_\_\_\_\_  
Fax number  
\_\_\_\_\_  
E-mail address  
\_\_\_\_\_  
Federal ID number

### GRANT INFORMATION:

Project Name: \_\_\_\_\_  
Project #: \_\_\_\_\_  
Amount of Grant: \$ \_\_\_\_\_  
Amount of Match: \$ \_\_\_\_\_ (10% or more)  
Project Total: \$ \_\_\_\_\_ (grant plus match)  
Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

### DEQ REPRESENTATIVE:

\_\_\_\_\_  
Name/Title  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Telephone number  
\_\_\_\_\_  
Fax number  
\_\_\_\_\_  
E-mail address

### AUTHORITY REPRESENTATIVE:

\_\_\_\_\_  
Name/Title  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Telephone number  
\_\_\_\_\_  
Fax number  
\_\_\_\_\_  
E-mail address

The individuals signing below certify by their signatures that they are authorized to sign this Grant Agreement on behalf of their respective parties, and that the parties will fulfill the terms of this Agreement, including the attached Exhibit A, and use this Grant only as set forth in this Agreement.

GRANTEE

\_\_\_\_\_  
Signature of Grantee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and title (typed or printed)

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

\_\_\_\_\_  
Its Authorized Officer

\_\_\_\_\_  
Date

MICHIGAN FINANCE AUTHORITY

\_\_\_\_\_  
Its Authorized Officer

\_\_\_\_\_  
Date

**I. PROJECT SCOPE**

This Agreement shall be in addition to any other contractual undertaking by the Grantee contained in the Resolution authorizing the Grant (the "Resolution").

This Agreement, including its exhibit(s), constitutes the entire agreement between the DEQ, the Authority, and the Grantee.

(A) The scope of this Grant is limited to the activities specified in Exhibit A (the "Project"), and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Grantee commits to complete the Project identified in Exhibit A within the time period allowed for in this Agreement and in accordance with the terms and conditions of this Agreement.

**II. AGREEMENT PERIOD**

This Agreement shall take effect on the date that it has been signed by all parties (the "Effective Date"). The Grantee shall complete the Project in accordance with all the terms and conditions specified in this Agreement no later than the End Date shown on page one. **Only costs incurred between the Start Date and the End Date shall be eligible for payment under this Grant.**

**III. CHANGES**

Any decreases in the amount of the Grantee's compensation, significant changes to the Project, or extension of the End Date, shall be requested by the Grantee in writing, and approved in writing by the State in advance. The State reserves the right to deny requests for changes to the Agreement including its Exhibit A. No changes can be implemented without approval by the State.

#### **IV. GRANTEE PAYMENTS AND REPORTING REQUIREMENTS**

The Grantee shall meet the reporting requirements specified in Section XVIII of this Agreement.

#### **V. GRANTEE RESPONSIBILITIES**

(A) The Grantee agrees to abide by all local, state, and federal laws, rules, ordinances and regulations in the performance of this Grant.

(B) All local, state, and federal permits, if required, are the responsibility of the Grantee. Award of this Grant is not a guarantee of permit approval by the state.

(C) The Grantee shall be solely responsible to pay all taxes, if any, that arise from the Grantee's receipt of this Grant.

(D) The Grantee is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by its subcontractors under this Agreement. The State will consider the Grantee to be the sole point of contact concerning contractual matters, including payment resulting from this Grant. The Grantee or its subcontractor shall, without additional grant award, correct or revise any errors, omissions, or other deficiencies in designs, drawings, specifications, reports, or other services.

(E) The DEQ's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Grantee of responsibility for the technical adequacy of the work. The DEQ's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(F) The Grantee understands that it is a crime to knowingly and willfully file false information with the State for the purpose of obtaining this Agreement or any payment under the Agreement, and that any such filing may subject the Grantee, its agents, and/or employees to criminal and civil prosecution and/or termination of the Grant.

#### **VI. ASSIGNABILITY**

The Grantee shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party without the prior written consent of the State. The State does not assume responsibility regarding the contractual relationships between the Grantee and any subcontractor.

#### **VII. NON-DISCRIMINATION**

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

## **VIII. UNFAIR LABOR PRACTICES**

The Grantee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*

## **IX. LIABILITY**

(A) The Grantee, not the State, is responsible for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by the Grantee under this Agreement, if the liability is caused by the Grantee, any subcontractor, or anyone employed by the Grantee.

(B) All liability as a result of claims, demands, costs, or judgments arising out of activities to be carried out by the State in the performance of this Agreement is the responsibility of the State and not the responsibility of the Grantee if the liability is materially caused by any State employee or agent.

(C) In the event that liability arises as a result of activities conducted jointly by the Grantee and the State in fulfillment of their responsibilities under this Agreement, such liability is held by the Grantee and the State in relation to each party's responsibilities under these joint activities.

(D) Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Grantee, the State, its agencies, or their employees as provided by statute or court decisions.

## **X. CONFLICT OF INTEREST**

No government employee or member of the legislative, judicial, or executive branches or member of the Grantee's governing body, its employees, partner, agencies or their families shall have benefit financially from any part of this Agreement, unless proportional to all other entities and as a normal outcome of implementing this Agreement.

## **XI. AUDIT AND ACCESS TO RECORDS**

See Section XVIII (C).

## **XII. INSURANCE**

The Grantee shall maintain insurance or self insurance that will protect it from claims that may arise from the Grantee's actions under this Agreement or from the actions of others for whom the Grantee may be held liable.

## **XIII. OTHER SOURCES OF FUNDING**

The Grantee guarantees that any claims made to the State under this Agreement shall not be financed by any source other than the State under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings or to immediately refund to the State, the total amount representing such duplication of funding.

## **XIV. COMPENSATION**

(A) A breakdown of Project costs covered under this Agreement is identified in Exhibit A. The State shall pay the Grantee a total amount not to exceed the amount on page one of this Agreement, in accordance with Exhibit A, and only for expenses incurred. All costs over and above the Grant amount, necessary to complete the Project, are the sole responsibility of the Grantee.

(B) The Grantee is committed to the match amount on page one of this Agreement, in accordance with Exhibit A. The Grantee shall expend all local match committed to the Project by the End Date of this Agreement.

## **XV. CLOSEOUT**

(A) A determination of Project completion shall be made by the DEQ upon satisfactory completion of the activities, products and deliverables described in Exhibit A and submittal of a request for final payment.

(B) The Grantee shall provide the DEQ, within 30 days of the End Date all outstanding financial reports, products and deliverables required as a condition of the Agreement.

(C) Final payment under this Agreement shall not constitute a waiver of the State's claims against the Grantee.

(D) The Grantee shall immediately refund to the State any payments or funds advanced to the Grantee in excess of allowable reimbursable billings.

(E) Grants may be audited by the State. Total expenditures are subject to audit and repayment of any overpayment of the DEQ share if an audit determines that total Project costs were not incurred as billed.

## **XVI. CANCELLATION**

This Agreement may be canceled, upon 30 days written notice, due to Executive Order, budgetary reduction, or other lack of funding.

## **XVII. TERMINATION**

(A) This Agreement may also be terminated by the State for any of the following reasons upon 30 days written notice to the Grantee:

(1) The State may terminate a Grant or withhold payment if the recipient fails to comply with the terms and conditions of the agreement or with the requirements of the authorizing legislation cited on page 1 or the rules promulgated thereunder, or with other applicable law or rules. If the Grant is terminated, the State may recover all funds awarded.

(2) If the Grantee knowingly and willfully presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement, the State may terminate this Agreement with no further penalty whatsoever to the Grantee, and the Grantee, upon demand by the State, shall reimburse the State for all money received under this Agreement.

(3) If the Grantee uses the Grant for any purpose other than those described in Exhibit A or otherwise approved by the State, the State may terminate the Grant and require immediate repayment from the Grantee of disbursed funds for the misused portion of the Grant.

(B) The State may immediately terminate this Agreement without further liability if the Grantee, or any agent of the Grantee, or any agent of any subagreement, is:

(1) Convicted of a criminal offense incident to the application for or performance of a state, public, or private contract or subcontract;

(2) Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;

(3) Convicted under state or federal antitrust statutes;

(4) Convicted of any other criminal offense which, in the sole discretion of the State, reflects on the Grantee's business integrity; or

(5) Included on the United State Environmental Protection Agency Suspension and Debarment list.

(C) If the State finds, after a notice and hearing, that the Grantee or any of the Grantee's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee or agent of the State, in an attempt to secure a sub-agreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement, the State may, by written notice to the Grantee, terminate this Agreement.

#### **XVIII. PROGRAM-SPECIFIC REQUIREMENTS: S2 REPAYABLE GRANT**

(A) General Representations. The Grantee represents and warrants to, and agrees with, the Authority and DEQ, as of the date hereof as follows:

(1) Grant monies shall be expended only to cover application costs for loan assistance from the State Revolving Fund (the "SRF") or the Strategic Water Quality Initiatives Fund (the "SWQIF").

(2) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees.

(3) The Grantee has full legal right, power and authority to execute this Agreement, and to consummate all transactions contemplated by this Agreement, the Resolution, and any and all other agreements relating thereto. The Grantee has duly authorized and approved the execution and delivery of this Agreement, the performance by the Grantee of its obligations contained in this Agreement, and this Agreement is a valid, legally binding action of the Grantee, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

(4) The Resolution has been duly adopted by the Grantee, acting through its governing body, is in full force and effect as of the date hereof, and is a valid, legally binding action of the Grantee, enforceable in accordance with the terms thereof except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and by principles of equity if equitable remedies are sought.

(5) The execution and delivery of this Agreement by the Grantee, and the fulfillment of the terms and conditions of, and the carrying out of the transactions contemplated by the Resolution and this Agreement do not and will not conflict with or constitute on the part of the Grantee a breach of, or a default under any existing law (including, without limitation, the Michigan Constitution), any court or administrative regulation, decree or order or any agreement, indenture, mortgage, obligation, lease or other instrument to which the Grantee is subject or by which it is bound and which breach or default would materially affect the validity or binding effect of the Grant, or result in a default or lien on any assets of the Grantee. No event has occurred or is continuing which with the lapse of time or the giving of notice, or both, would constitute a default by the Grantee under the Resolution or this Agreement.

(6) No consent or approval of, or registration or declaration with, or permit from, any federal, state or other governmental body or instrumentality, is or was required in connection with enactment by the Grantee of the Resolution, or execution and delivery by the Grantee of this Agreement which has not already been obtained, nor is any further election or referendum of voters required in connection therewith which has not already been held and certified and all applicable referendum periods have expired.

(7) Proceeds of the Grant will be applied (i) to the financing of the Project or a portion thereof as set forth in the Resolution and Exhibit A or (ii) to reimburse the Grantee for a portion of the cost of the Project. The Grantee will expend the proceeds of each disbursement of the Grant for the governmental purpose for which the Grant was issued.

(8) The attached Exhibit A contains a summary of the estimated cost of the Project, which the Grantee certifies is a reasonable and accurate estimate.

(9) The Grantee reasonably expects (i) to fulfill all conditions set forth in this Agreement to receive and to keep the Grant, and (ii) that no event will occur as set forth in this Agreement which will require the Grantee to repay the Grant.

(B) Repayment of Grant. The Grantee shall repay the Grant, within 90 days of being informed to do so, with interest calculated from the date Grant funds are first drawn at a rate not to exceed 8% per year, to be determined by the Authority, to the Authority for deposit into the SWQIF if any of the following occur as determined by the State:

(1) The Grantee fails to submit an administratively complete loan application for assistance from the SRF or the SWQIF or other source of financing for the SRF or SWQIF project within 3 years of the Grant award.

(2) The SRF or SWQIF project has been identified as being in the fundable range or is approved for funding from another source and the Grantee declines loan assistance for 2 consecutive fiscal years unless the Grantee proceeds with funding from another source..

(3) The Grantee is unable to, or decides not to, proceed with constructing the SRF or SWQIF project.

(C) Covenants and Certifications.

(1) The Grantee has the legal, managerial, institutional, and financial capability to plan, design, and build the Project, or cause the Project to be built, and cause all facilities eventually constructed to be adequately operated.

(2) The applicant certifies that no undisclosed fact or event, or pending litigation, will materially or adversely affect the Project, the prospects for its completion, or the applicant's ability to make timely repayments of the grant if the Project does not proceed or if the Project is funded through means other than a loan from the SRF or the SWQIF.

(3) The Grantee agrees to provide as a minimum a 10% local match for grant-eligible costs and disburse match funds to service providers concurrent with grant disbursements.

(4) The Grantee agrees to maintain complete books and records relating to the grant and financial affairs of the Project in accordance with generally accepted accounting principles ("GAAP") and generally accepted government auditing standards ("GAGAS").

(5) The Grantee agrees that all municipal contracts related to the Project will provide that the contractor and any subcontractor may be subject to a financial audit and must comply with GAAP and GAGAS.

(6) The Grantee will notify the DEQ and the Authority within 30 days of the occurrence of any event which, in the judgment of the applicant, will cause a material change in the financial condition of the Project, or, if the applicant has knowledge, of the wastewater transport and treatment system of which the Project is a part. Such events include the receipt of funding from any other sources, including another state or federal program, for Project costs financed by the S2 Grant.

(7) The Grantee agrees to provide any necessary written authorizations to the DEQ and the Authority for the purpose of examining, reviewing, or auditing the financial records of the Project. The applicant also agrees to require similar authorizations from all contractors, consultants, property owners or agents with which the applicant negotiates an agreement.

(8) The Grantee agrees that all pertinent records shall be retained and available to the DEQ and the Authority for a minimum of three years after satisfactory completion of the Project and final payment. If

litigation, a claim, an appeal, or an audit is begun before the end of the three-year period, records shall be retained and available until the three years have passed or until the action is completed and resolved, whichever is longer.

(9) The Grantee agrees to ensure that planning and design activities of the Project are conducted in compliance with the requirements of Part 53 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, its Administrative Rules and Recommended Standards for Wastewater Facilities published by the Wastewater Committee of the Great Lakes – Upper Mississippi River Board of State and Provincial Health and Environmental Managers, and all applicable state and federal laws, executive orders, regulations, policies, and procedures.

(10) The Grantee agrees that the Project shall proceed in a timely fashion and will exercise its best efforts to cause completion of the associated loan application requirements within three years of award of the S2 Grant from the Strategic Water Quality Initiatives Fund in accordance with Section 5204(a) of the Natural Resources and Environmental Protection Act 1994, PA 451, as amended.

(11) The Grantee certifies that: (a) if it is the owner or operator of an oceangoing vessel or a non-oceangoing vessel, it is in compliance with the requirements of MCL §324.3103a, and is on an applicable list prepared under MCL §324.3103a(4); and (b) if it has contracts for the transportation of cargo with an oceangoing or non-oceangoing vessel operator, that operator(s) is/are on an applicable list prepared under MCL §324.3103a(4).

#### (D) Grantee Reimbursements and Deliverables

The Grantee may request grant disbursements no more frequently than monthly, using the Disbursement Request Form provided by the DEQ. Upon receipt of a disbursement request, the DEQ will notify the Authority, which will in turn disburse grant funds equal to 90% of eligible costs that have been adequately documented. The forms provided by the State will include instructions on their use and shall be submitted to the State representative at the address on page 1. All required supporting documentation (invoices) for expenses must be included with the disbursement request form. The Grantee is responsible for the final submittal of all documents prepared under this Grant and included in the Project Scope identified in Exhibit A.

#### (E) Miscellaneous Provisions

(1) Applicable Law and Nonassignability. This Agreement shall be governed by the laws of the State of Michigan.

(2) Severability. If any clause, provision or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

(3) Execution of Counterparts. This Agreement may be executed in several counterparts each of which shall be regarded as an original and all of which shall constitute one and the same document.

### XIX. USE OF MATERIAL

Unless otherwise specified in this Agreement, the Grantee may release information or material developed under this Agreement, provided it is acknowledged that the DEQ funded all or a portion of its development.

### XX. SUBCONTRACTS

The State reserves the right to deny the use of any consultant, contractor, associate or other personnel to perform any portion of the project. The Grantee is solely responsible for all contractual activities performed under this Agreement. Further, the State will consider the Grantee to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Grant. All

subcontractors used by the Grantee in performing the project shall be subject to the provisions of this Agreement and shall be qualified to perform the duties required.

**XXI. ANTI-LOBBYING**

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "Lobbying" means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

Project No. \_\_\_\_\_

**S2 Grant Program**

**Exhibit A**

Grantee: \_\_\_\_\_

Project Name: \_\_\_\_\_

DEQ Approved Grant Amount: \$ \_\_\_\_\_;

\_\_\_\_\_ Dollars

Time Period for Eligible Costs: Start Date \_\_\_\_\_ (month/year)

End Date \_\_\_\_\_ (month/year)

Description of Approved Project Scope:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEQ Approved Project Costs	
1. Planning Costs	\$ _____
2. Revenue System Development Costs	\$ _____
3. Design Engineering Costs	\$ _____
4. Eligible Cost Subtotal	\$ _____
5. LESS ( $\geq 10\%$ ) Local Match	\$ _____
6. Approved S2 Grant Amount (Line 4 minus Line 5)	\$ _____

The following services have been determined to be ineligible for S2 Grant assistance, for the reasons listed, and have been excluded from the approved project costs shown above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Purchase of Capacity

**DATE:** June 3, 2013

**PRESENTED BY:** Don Swem

**ATTACHMENTS:**

**BACKGROUND INFORMATION:**

At the Michigan Public Power Agency (MPPA), Charlevoix belongs to the Energy Services Project, through which we contract for a significant portion of our future capacity and energy requirements. The City gets its basic power requirements through partial ownership of two coal plants, two natural gas plants, and several small landfill gas plants. If we owned very much more we would actually have too much power at the slow times at night, on weekends or in the shoulder seasons, and would end up selling the extra at a steep loss. Therefore we sort of do a balancing act by predicting hourly loads for the next several years and trying to purchase just enough energy and capacity to meet our hourly needs without going too far over. We accomplish this by contracting for as much as practical of our future needs while keeping as many options available as possible in case of unexpected changes.

We control this whole process with the City of Charlevoix Energy Risk Management Policy and associated Hedge Plan that were approved by Council in 2011. These documents provide the guidance for MPPA to plan and recommend our future purchases to keep us as close as possible to our stated goals of economy and price stability.

At this time MPPA has identified an opportunity to buy a portion of the future capacity we need at an economical price. There has been an offer to sell us capacity over the next five years (Planning Year 2014/2015 to Planning Year 2018/2019) at an average cost of \$2.10 per KW per month. As a point of reference, last year we did a capacity transaction from Planning Year 2014/2015 to Planning Year 2017/2018 for \$2.85 per KW per month so this new proposal looks good. Also, the price is significantly lower than the projection that was used in our 5-year hedge plan report so locking in this pricing will lower our projected costs.

It is being asked that Council approve expenditures to purchase up to 900 kW of capacity at a maximum price of \$2.10 per kW-month for the term from June 1, 2014 through May 31, 2019. This is a maximum expenditure of  $900 \text{ kW} \times \$2.10/\text{kW-month} \times 60 \text{ months} = \$113,400.00$ .

The purpose of this transaction is to provide a hedge against rising prices for capacity in the coming years. Buying portions of capacity at different times tends to help spread the risk of higher prices. It may happen that prices will continue to remain low for years to come and we ended up paying a premium in the later years, but locking in a somewhat reasonable price now is considered to be safer than just waiting to see if prices stay low.

**RECOMMENDATION:**

It is recommended that Council consider a motion for approval to spend up to a maximum of \$113,400 to purchase blocks of capacity through MPPA for the years 2014 through 2019.

## CHARLEVOIX CITY COUNCIL

### AGENDA ITEM

**AGENDA ITEM TITLE:** Discussion Regarding Requests from Councilmember Campbell

**DATE:** June 3, 2013

**PRESENTED BY:** Gabe Campbell, Councilmember

**ATTACHMENTS:** 1. Hand-written sheet from Gabe Campbell  
2. City of Charlevoix Donation Acceptance Policy  
3. Article V. Planning Commission

**BACKGROUND INFORMATION:** At the May 20, 2013 council meeting, Council member Campbell requested that the City adopt per ordinance specific criteria regarding donations, memorials and the review process for additions to City property. We have attached the City Council approved Donation Acceptance Policy for your review.

The following four points have been submitted by Councilmember Campbell:

**1. The City of Charlevoix ordains that there will be no personal memorials allowed on City property except in the cemetery.**

The Donation Acceptance Policy allows for “memorial plaques” to be placed on donated items to the City with City Council’s approval. See Part 5-B. Policy does not specifically address “memorials.”

**2. The City of Charlevoix ordains that any structures erected in any of the City parks larger than a park bench or table require a vote of the people.**

The Donation Acceptance Policy does not address size of donations. “Larger than a park bench or table” is subjective and difficult to quantify. For example, would planting a tree or installing a swingset trigger a vote of Charlevoix residents? Our form of government is a representative democracy where the City Council is elected to make decisions that are in the best interest of the community. Requiring a vote of the residents for erecting any structure larger than a park bench or table in any City park would be cost-prohibitive and lead to unreasonable levels of bureaucratic inertia.

**3. The City of Charlevoix ordains that any new structures on City property must go to the Planning Commission for review.**

The Donation Acceptance Policy does address this, but for donations only. Part 4 states: “The City Council may choose to consult with other agencies or organizations in the

review process. The City Council may also send any donation proposal to the appropriate board or committee for review and subsequent recommendation to the City Council.” Structures not donated are not addressed by this policy. Theoretically, this would give another level of review and opportunity to receive public comment for new structures on City land. There would have to be a specific definition of what constitutes a “structure”. If adopted, Staff would need clarification on “structures” to make sure we can properly follow such a regulation. Please note: The Planning Commission will be working on a policy in July that defines what type of projects should be reviewed by the Planning Commission. The draft policy will be recommended to City Council for their consideration when completed.

**4. The City of Charlevoix ordains that no gifts will be accepted by the City if it requires any cost to the City.**

This is specifically addressed in the Donation Acceptance Policy, Part 3-D Cost. City Council and Staff purposefully drafted the language to be flexible as there are donations made to the City whose inherent value may exceed the annual costs of maintenance and operation. Examples of this may include: fire trucks, park benches, the Interactive Water Fountain, etc. Conversely, there may be prospective donations whereby the City chooses to not accept because of the annual operation/maintenance costs. We believe that there is not a “one size fits all approach” and having the flexibility for Council and Staff to decide on the merits of each donation is in the City’s best interests.

**RECOMMNDATION:** Discussion with direction to Staff.

The C. Ty of CHARLEVOIX ORDAINS THAT THERE  
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C. TY PROPERTY EXCEPT IN THE CEMETAY

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GIFTS WILL BE ACCEPTED BY THE CITY IF  
IT REQUIRE ANY COST TO THE CITY.

# **City of Charlevoix Donation Acceptance Policy**

## **1. Introduction**

The City truly appreciates the generosity of donors who wish to make Charlevoix a finer community for all. The residents of the City of Charlevoix have a proven track record in not only volunteering for many community initiatives and serving on various boards but also making generous donations. These efforts further enhance our quality of life and contribute to making "Charlevoix the Beautiful" a truly unique and special community. These invaluable efforts often make the difference between a good community and a great community. Examples of past donations include art work, vehicles, benches, trees and other items. The current list of donated amenities that have been partially or fully funded by the generosity of an individual, organization, or foundation is a long one. Charlevoix and its residents are very fortunate.

## **2. Purpose**

The purpose of this policy is to establish guidelines, standards and procedures for the acceptance of personal property to the City, including the installation, long-term maintenance and operation of donated elements to the City. The City of Charlevoix (hereinafter the "City") desires to encourage donations while at the same time consider aesthetic impacts and on-going maintenance and operational costs. Any donated items become property of the City of Charlevoix.

Acceptance Guidelines and Standards established by this policy will apply to all donations made after the effective date of this policy, and shall also include the current proposal to construct a Community Fireplace in East Park.

## **3. Standards for New Donations**

### **A. Definitions**

**Donation**-an act or instance of presenting something as a gift or contribution either monetary or a physical element.

**New Donations**-New donations are those made after the adoption of this policy, but shall include the current proposal to construct a Community Fireplace in East Park.

### **B. Appearance and Aesthetics**

The City and the community have an interest in ensuring the best appearance and aesthetic quality of their public lands and facilities. Donated elements and their associated acknowledgments should reflect the character of the park or facility. All

elements will be installed in such a manner that will not substantially change the character of a facility or its intended use.

#### C. Maintenance/Repair

Donated elements and their associated acknowledgement become City property. The community has an interest in ensuring that all elements remain in good repair. In addition, the community has an interest in ensuring that the short and long-term repair costs are reasonable and that repair parts and materials must be readily available. Donated elements must be of high quality to ensure a long life, be resistant to the elements, wear and tear, and to acts of vandalism.

#### D. Cost

The City has an interest in ensuring that the donor covers the full cost for the purchase, installation, and maintenance and operation during the expected life cycle of donated elements. Conversely, the City may determine that the value of a donated element far exceeds the maintenance and operational costs. Each donation is unique and should be evaluated on its own merits. Consequently, the City shall consider the following options when considering donations:

1. Require all estimated annual maintenance and operation costs be paid in advance by private donations or funding sources other than taxpayer dollars prior to use of the donated item;
2. At the time of the donation, the City must receive sufficient funds or financial commitments to cover anticipated on-going maintenance and operation costs of donated elements during their expected life expectancy.
3. The inherent value of the donation exceeds the annual maintenance and operational costs requiring no funds be contributed by the donor to the City.

### **4. Procedure for Making a Donation**

The City Council shall have the authority to approve, deny or modify all donations. Prior to preparing a written proposal, the donor or donor's representative shall contact the City Manager's Office to discuss a proposed donation. A pre-application meeting may assist the potential donor in determining if a gift will meet the criteria contained in this policy. City Staff or City Council may request additional information such as but not limited, to scaled drawings, artist's rendition or other documents or submittals to better illustrate the exact nature of the donated elements. All submittal materials shall be paid by the donor or donor's representative. The City may choose to consult with other agencies or organizations in the review process. The City Council may also send any donation proposal to the appropriate board or committee for review and subsequent recommendation to the City Council.

If a gift appears to be in accordance with this policy, the donor or donor's representative will then submit a written proposal and meet with City Staff members to determine the specific nature of the donation, proposed location, and yearly maintenance and operational costs for review and processing. The written proposal, including a Staff report, will be sent to City Council for their decision.

## **5. Acceptance Guidelines, Acknowledgements/Memorial Plaques**

### **A. Acceptance Guidelines**

Based upon the City's best interests, the City may accept a donation element for a specific facility or location. When considering donations, the City Council shall consider the following criteria in its decision-making process:

1. Does the proposed donation substantially interfere with the intended current or future use of the land or facility where it is being proposed to be located;
2. Uniqueness of the proposal and its ability to attract visitors to the community;
3. Whether the donated element requires relocation or installation of other equipment or infrastructure to accommodate the donation;
4. A plan exists showing the available locations for donated elements;
5. Any substantial impacts on public health, safety or welfare.
6. Recommendation of the City Staff.

The City Council is not obligated to accept donations but will consider each donation based upon its own merits. Some City facilities may be fully developed and the opportunity for donations may not be available.

### **B. Acknowledgements/Memorial Plaques**

Donation acknowledgments and memorial plaques shall be made of bronze and be of the highest quality, life and durability. In cases where bronze plaques are not feasible, other alternative types may be considered. Donation acknowledgements/memorial plaques and its text will be approved by the City Council with all acknowledgments being tasteful and subtle.

## **6. Installation**

If the donated element, including donor acknowledgements/memorial plaques, requires any type of installation, the installation shall be completed by a licensed contractor and/or City Staff. The donor shall select and pay for the licensed contractor and the selection of the contractor shall be

approved by the City. The licensed contractor shall assume all responsibility for construction or placement of a donated element and shall hold the City harmless for any damages to property or buildings. If installation includes City Staff, the City may require reimbursement for personnel and equipment costs associated with installation of donated element. The installation will be scheduled at a time and date as determined by City Staff so as not to unnecessarily interfere with routine maintenance activities and in a manner that minimizes impacts to the community. City Staff shall oversee the installation process to ensure compliance with the proposal.

## **7. Removal and/or Relocation**

This section applies to both existing and new donations. When it is in the City's best interest, the City reserves the right to restore, relocate, remove or relinquish donations that are no longer suited for their original purpose. Donations do not confer special privilege or rights for the donor or any other person or entity. Donations are graciously and unconditionally accepted without obligation.

## **8. Donations Impacting City Parks**

If a donated physical element is being proposed for a City park, Council may hold a Public Hearing on the proposed donation. In determining whether a Public Hearing is appropriate, City Council shall consider whether there is a reasonable likelihood that the donated element would have one or more significant impacts on the park or the surrounding community. Significant impacts may included but are not limited to: impacts on viewsheds, size of the proposed element, noise generation, safety concerns or other impacts deemed appropriate by City Council. Purpose of the Public Hearing will be to solicit input from City residents on the proposed donation, the anticipated significant impacts and whether any adverse impacts can be lessened or eliminated.

**ARTICLE V: PLANNING COMMISSION**  
(Ord. 751, 07/18/11)

**1.400 Creation.**

There shall be a City of Charlevoix Planning Commission pursuant to Act 33 of the Michigan Public Acts 2008, as amended, being the Michigan Planning Enabling Act (MCL 125.3801 et seq.), hereinafter referred to as the Planning Commission with the powers and duties as therein set forth and as hereinafter provided. This article shall be officially known and described as the "City of Charlevoix Planning Commission Ordinance."

**1.401 Membership.**

1. The Planning Commission shall consist of nine members appointed by the Mayor and subject to approval by a majority vote of the City Council. To be qualified to be a member and remain a member of the commission, the following qualifications must be met:
  - (a) Shall be a qualified elector of the City of Charlevoix, as defined in Section 1.407.
  - (b) Shall attend training for commission members, pursuant to Section 1.402 after an individual's first appointment and before reappointment;
  - (c) Shall meet the conditions provided for each individual member in subsections 2, 3, and 4.
2. Members shall be appointed for three-year terms. If a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment such that the terms of one-third of all commission members continue to expire each year. A member shall hold office until his or her successor is appointed.
3. The membership shall be representative of the important segments of the community, such as the economic, governmental, educational, and social development of the City of Charlevoix, in accordance with the major interests as they exist in the city, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, commerce, healthcare, building trades, hospitality, retail, finance, insurance, real estate, cultural, historic, and recreational resources.
4. The membership shall also be representative of the entire geography of the City of Charlevoix to the extent practicable.
5. The City shall fill any vacancy in the membership of the commission for the unexpired terms in the same manner as the initial appointment.
6. The transition from the previous City of Charlevoix Planning Commission and the commission established in this article shall be gradual and shall take place over the next three years. The City shall continue to make annual appointments, appointing approximately one-third of the membership of the commission as specified in this article, so that three years from the effective date of this article the membership, membership representation, and number of members have completed the transition to fully comply with this article. All other aspects of this article shall have immediate effect.

**1.402 Training.**

Appointed members of the Planning Commission shall attend educational programs designed for training members of Michigan planning commissions if the adopted City of Charlevoix budget for that fiscal year includes funds to pay for tuition, registration, and travel expenses for the training. Nothing in this paragraph shall prevent a member who has not had training from finishing his or her term of office unless the member resigns or is removed by action of the City Council. The member shall be ineligible for reappointment at the conclusion of the term of office if they did not attend training. The Planning Commission shall include in its bylaws what training programs qualify to meet this requirement.

#### **1.403 Removal from office.**

The City Council may remove a member of the Planning Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Failure to disclose a potential conflict of interest as required by Section 1.404(4) shall constitute malfeasance in office.

#### **1.404 Meetings**

1. The Planning Commission shall hold not less than four regular meetings each year, and by resolution shall determine the time and place of meetings. Unless the bylaws provide otherwise, a special meeting of the commission may be called by the chairperson or by two other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of a special meeting to commission members not less than 48 hours before the meeting.
2. The business that the Planning Commission may perform shall be conducted at a public meeting of the commission held in compliance with the Open Meetings Act, Act 267 of the Michigan Public Acts of 1976 (MCL 15.261 to 15.275). Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.
3. A writing prepared, owned, used, in the possession of, or retained by the Planning Commission in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, Act 442 of the Michigan Public Acts of 1976 (MCL 15.231 to 15.246).
4. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Planning Commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the Planning Commission.

#### **1.405 Powers and Duties**

1. Master Plan.
  - (a) The Planning Commission shall make and approve a Master Plan as a guide for development within its planning jurisdiction. The planning jurisdiction includes areas within the city and may also include any areas outside of the city that, in the judgment of the commission, are related to planning for the city.
  - (b) In preparation of the Master Plan, the Planning Commission shall do all of the following, as applicable:
    - i. Make careful and comprehensive surveys and studies of present conditions and future growth within the planning jurisdiction with due regard to its relation to neighboring jurisdictions.
    - ii. Consult with representatives of adjacent local units of government in respect to their planning so that conflicts in master plans and zoning may be avoided.
    - iii. Cooperate with all departments of the state and federal governments and other public agencies concerned with programs for economic, social, and physical development within the planning jurisdiction and seek the maximum coordination of the local unit of government's programs with these agencies.
  - (c) The Master Plan shall address land use and infrastructure issues. The plan shall include maps, plats, charts, and show the commission recommendations for the physical development of the city. The Master Plan shall also include information pertinent to the future development of the planning jurisdiction as detailed in Act 33 of the Michigan Public Acts of 2008. (MCL 125.3833 (2)).
  - (d) Preparation and adoption of and amendments to the Master Plan shall follow the procedures established in Act 33 of the Michigan Public Acts of 2008 (MCL 125.3839-125.3845).
2. Records.
  - (a) The Planning Commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings and determinations.

- (b) The Planning Commission shall make an annual report to City Council concerning its operations and the status of planning activities, including recommendations regarding actions by the City Council related to planning and development.
3. Capital improvements program.  
Upon adoption of the Master Plan, the Planning Commission shall annually prepare a capital improvements program (CIP) of public structures and improvements, with the assistance of staff. The CIP shall show those public structures and improvements, in the general order of their priority for the ensuing six-year period, based upon the requirements of the local unit of government for all types of public structures and improvements.
  4. Review of plats.  
Upon adoption of the Master Plan, the Planning Commission shall review and make recommendations on plats, after publishing and holding a public hearing.

**1.406 Approval, ratification, and reconfirmation.**

All official actions taken by the City of Charlevoix Planning Commission preceding the commission created by this article are hereby approved, ratified and reconfirmed. Any project, review, or process taking place at the effective date of this article shall continue with the commission created by this article, subject to the requirements of this article, and shall be deemed a continuation of any previous City of Charlevoix Planning Commission. This article shall be in full force and effect from and after its adoption and publication.

**1.407 Definitions.**

For purposes of this article, the following words shall have the following meanings respectively ascribed to them, except where the content clearly indicates a different meaning:

1. *Qualified elector*, as used in this article, intending to be consistent with Section 10 of the Michigan Election Law, being MCLA 168.10, means a United States citizen who has been a resident of the State of Michigan for six months, the City of Charlevoix for 30 days and is 18 years or older.
2. *Residence*, as used in this article, intending to be consistent with Section 11 of the Michigan Election Law, being MCLA 168.11, means that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. If a person has more than one residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence.
  - (a) An elector shall not be deemed to have gained or lost a residence by reason of being employed in the service of the United States or of this state, while engaged in the navigation of the waters of this state or of the United States or of the high seas, while a student at an institution of learning, while kept at any state facility or hospital at public expense, or while confined in a jail or prison. Honorably discharged members of the armed forces of the United States or of this state and who reside in the veterans' facility established by this state may acquire a residence where the facility is located. The residence of a person who is a patient receiving treatment at a hospital or other facility pursuant to Act No. 258 of the Public Acts of 1974, as amended, being Sections 330.1001 to 330.2106 of the Michigan Compiled Laws, is the village, city, or township where the person resided immediately before admission to the hospital or other facility.
  - (b) A member of the armed forces of the United States shall not be deemed a resident of this state in consequence of being stationed in a military or naval place within the state.

**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Discussion Regarding Delinquent Payment of Freedom of Information Act (FOIA) Charges

**DATE:** June 3, 2013

**PRESENTED BY:** Jeff Porter, Council Member

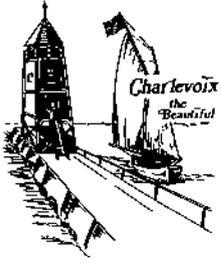
- ATTACHMENTS:**
1. Invoice for Julie Roth
  2. State Statute 15.234-Waiving or Reducing Fees
  3. Letter from Bryan Graham
  4. FOIA Request from Julie Roth

**BACKGROUND INFORMATION:** There have been questions from council members on whether Ms. Roth should be responsible for paying a delinquent bill for a FOIA request made by her. Staff would like direction from the City Council on this issue.

The attached invoice for \$1,222.05 pertains to billable staff hours spent on researching requests for information from Julie Roth and for copies made per her request. The invoice has been outstanding for several months with the Treasurer's Office requesting payment since February of 2013. It is important to note that the City Clerk worked with Ms. Roth in limiting the scope of the FOIA request to minimize costs. It is also notable that the large boxful of documents was never picked up by Ms. Roth. Additionally, on December 3, 2012 the City Clerk spoke to Ms. Roth and stated that the fees could be in excess of \$1,000.

Per State Statute 15.234 the governing body has the option to waive or reduce fees "*... if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.*" See attached State Statute.

**RECOMMENDATION:** Staff does not recommend waiving or reducing any fees for the FOIA request. It would be setting a bad precedent and the City Manager does not see how waiving the fees would be "*primarily benefiting the general public.*"



**CITY OF CHARLEVOIX**

210 State Street  
 Charlevoix, MI 49720  
 Tax I.D. 38-6004543

**Invoice**

Date	1/9/2013
Invoice #	33527
Due Date	2/8/2013

JULEE ROTH  
 102 ALICE  
 CHARLEVOIX, MI 49720

Description	Qty	Rate	Amount
FOIA request dated 12/03/12			
Copies	3,365.00	0.10	336.50
Audio CDs	17.00	3.00	51.00
City of Charlevoix Rules & Procedure	1.00	3.00	3.00
City of Charlevoix Charter	1.00	10.00	10.00
Billable time in excess of 2 hours (hourly wage of Deputy Clerk)	48.50	17.97	871.55
Less: Good Faith Deposit		-50.00	-50.00

Total	\$1,222.05
Payments/Credits	\$0.00
Balance Due	\$1,222.05

101-000-040 PLEASE RETURN PINK COPY WITH PAYMENT.

Phone #	Fax #	E-mail	Web Site
(231) 547-3260	(231) 237-0329	sbrown@cityofcharlevoix.org	www.cityofcharlevoix.org

information or data, or a field name if disclosure of that field name does not violate a software license.

(g) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(h) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

(i) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

**15.233 Public records; right to inspect, copy, or receive; subscriptions; forwarding requests; file; inspection and examination; memoranda or abstracts; rules; compilation, summary, or report of information; creation of new public record; certified copies.**

Sec. 3. (1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable. An employee of a public body who receives a request for a public record shall promptly forward that request to the freedom of information act coordinator.

(2) A freedom of information act coordinator shall keep a copy of all written requests for public records on file for no less than 1 year.

(3) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.

(4) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.

(5) This act does not require a public body to create a new public record, except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record.

(6) The custodian of a public record shall, upon written request, furnish a requesting person a certified copy of a public record.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1996, Act 553, Eff. Mar. 31, 1997.

Popular name: Act 442

Popular name: FOIA

**15.234 Fee; waiver or reduction; affidavit; deposit; calculation of costs; limitation; provisions inapplicable to certain public records.**

Sec. 4. (1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request to an

**YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.**

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www.upnorthlaw.com

Bryan E. Graham  
Peter R. Wendling

Lori A. Lockett  
Eugene W. Smith

*James G. Young, Of Counsel*

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May 22, 2013

Julie Roth  
102 Alice St.  
Charlevoix, MI 49720

SUBJECT: Delinquent fees for Freedom of Information Act (FOIA) request dated  
December 3, 2012

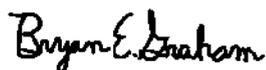
Dear Ms. Roth:

Please be advised that I am the assistant city attorney for the City of Charlevoix. The city clerk's office has contacted me concerning your failure to pay the fees the city charged you for the above FOIA request. These fees are authorized by the Freedom of Information Act itself. With your payment of the \$50 good faith deposit, the remaining balance due is \$1,222.05. I have enclosed a copy of the city invoice for your convenience.

If you do not make the required payment within seven (7) days from the date of this letter, I will have no choice but to advise the city of its legal rights in this matter. If you need time to make this payment, please contact the city clerk's office to make arrangements for a payment schedule.

Because I know you will want to avoid a needless legal proceeding, I look forward to hearing from the city clerk's office that you have either made the required payment or have made arrangements to make installment payments.

Yours truly,



Bryan E. Graham

BEG

Enclosure

cc: Stephanie C. Brown, Deputy City Clerk (via email) (w/o enclosure)  
Rob Straebel, City Manager (via email) (w/o enclosure)

Julee Roth  
102 Alice Street  
Charlevoix MI 49720  
(970) 390-0018 mobile  
juleeroth@yahoo.com

December 3, 2012

**Via 1<sup>st</sup> Class Mail &  
Fax No. (231) 547-3617**

FOIA Coordinator  
City of Charlevoix Clerk's Office  
201 State Street  
Charlevoix, MI 49720

RE: Fireplace to be built and located in East Park  
Freedom of Information Act Request  
MCL 15.231; MSA 4.1801, *et seq.*  
Our File N<sup>o</sup>. 5045.00

Dear FOIA Coordinator:

Under the provisions of the Freedom of Information Act (FOIA), I request access to and copies of all documents contained in your file relating to the proposed construction and location of a fireplace in East Park. Specifically, I request copies of the following:

1. For any City of Charlevoix committee, subcommittee, council, or commission meeting, all audio and visual recordings, correspondence, minutes, inter- or intra-office communications, electronic mail (including in-box, out-box, trash-box, and sent items), notes (including handwritten notes and telephone messages), calendar or appointment book entries, memoranda or other documents concerning the proposed construction, preparation of the site, and location of a fireplace in East Park.
2. Applications, approvals or denials, recommendations of approvals, denials or modification, permits and permit denials from the DDA, Shade Tree Commission, City Manager, Michigan Department of Transportation, Department of Environmental Quality, or Departments within the County of Charlevoix, including building, soil erosion, etc.
3. Studies, analyses, reports etc. determining the compatibility with the City's master plan, parks and recreation plan, and zoning plan.
4. All public notices, proof of publishing public notices and list of distribution for all meetings held by the City Council, the Planning Commission, the DDA and the Shade

1

- Tree Commission or any of their subcommittees, including joint meetings related to any aspect of locating the fireplace in East Park.
5. Estimate of costs, financial and economic feasibility studies, funding sources, impact on taxes.
6. Charter, bylaws, rules of procedure, and powers and authority of the Planning Commission, Shade Tree Commission and the Downtown Development Authority.
7. Legal analyses prepared by the City's attorney.
8. Applications, approvals or denials, recommendations of approvals, denials or modification from the Charlevoix City Manager, City Council, and Planning Commission.
9. Dedication of East Park, deed, or any conveyancing document related to the establishment of East Park as a City Park.
10. Site, engineering, architectural and building plans.
11. Written public comment, letters, petitions, and e-mails concerning the fireplace.
12. Bids, contracts, and requests for proposals.
13. City master plan, recreation plan, plans specific to East Park, and DDA plan.

as built

All other documents in your files pertaining to this matter which are part of the public record.

If the requested documents do not exist, please indicate that in your response.

If your file contains large scale plans or drawings, rather than photocopying them piecemeal, please inform us of same, identifying the contents and/or subject matter, and suggest some way in which full-size copies can be obtained. Likewise, if your file contains any other "writing," as defined by the Freedom of Information Act to include photographic films, prints, microfilm, microfiche, magnetic or punched cards, disks, or other ways of recording or retaining meaningful information (such as audio or video tapes, or information stored on computer), please inform us of same, identifying contents and/or subject matter, as well as the format, and suggest some way in which we can obtain usable copies.

If all or any part of this request is denied, please cite the specific exemptions which might justify your refusal to release the information, pursuant to Section 13 of the Act (MCL 15.243), and the reason why you have not invoked your discretion to release the requested documents in the public interest. We further request any segregable portion of any document you might otherwise withhold. For each record or portion of a record which you withhold, we specifically request a particularized description of the basis for withholding it. See *Vaughn v Rosen*, 484 F2d 820 (D.C. Cir., 1973), cert. denied, 415 U.S. 977 (1974), cited with approval in *The Evening News Assn v Troy*, 417 Mich 481 (1983).

As I am sure you are aware, a response to a request under the FOIA must be completed within five business days. If additional time is required, please contact my office. Thank you for your cooperation and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julee Roth", with a long horizontal flourish extending to the right.

Julee Roth

## CHARLEVOIX CITY COUNCIL

### AGENDA ITEM

**AGENDA ITEM TITLE:** Discussion Regarding the City Clerk Position

**DATE:** June 3, 2013

**PRESENTED BY:** Rob Straebel

**ATTACHMENTS:** City Hierarchy Chart

**BACKGROUND INFORMATION:** There has been discussion regarding the City Clerk position and the merits of having this position as either “elected” or “appointed (hired)”. The current City Clerk is not running for re-election after nine dedicated years on the job. City Clerk Ochs has done a commendable job for the City and we are very fortunate to have her skill sets and experience. The discussion has nothing to do with her performance over the last nine years.

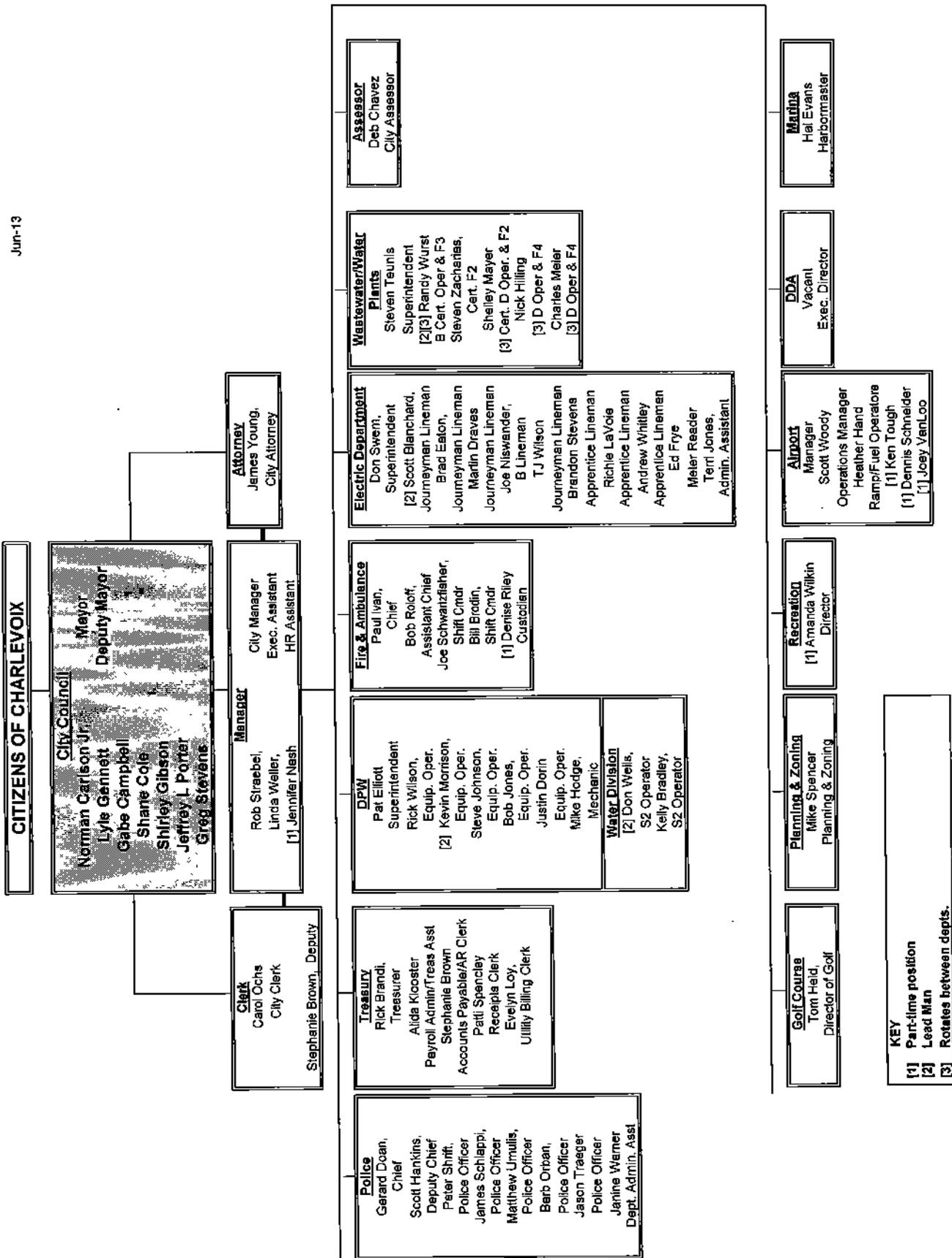
In November of 2013, there will be an election to vote for the next City Clerk. To date, we have one interested resident, Larry Sullivan, who has filed a petition to get his name on the November ballot. (There is a question regarding if there is a conflict of interest in Mr. Sullivan being both a Charlevoix County Commissioner and City Clerk. This may require an opinion from the State Attorney General). The deadline to submit a petition for the City Clerk has passed; although there could be write-in candidates in the future.

An “elected clerk” may or may not have the skill set for the job. The duties require strong administrative, written and verbal skills as well as knowledge about Freedom of Information Act (FOIA), drafting meeting minutes, archiving, issuing licenses and a bevy of other professional skills. If the new clerk does not have these skills, they will need to attend training to learn about the intricacies of running the clerk’s office.

Research completed by a MML pay/benefits survey shows of 127 communities reporting, 106 are appointed, 16 elected and 5 did not specify. Typically, smaller communities like Charlevoix hire their Clerks and may combine the position with other duties.

It would be challenging to get a question on the ballot for November. The State of Michigan has to review the ballot language and absentee voting begins in August. Setting up a committee to research the issue may be best considering it is already June.

**RECOMMENDATION:** Discussion.



**CHARLEVOIX CITY COUNCIL**

**AGENDA ITEM**

**AGENDA ITEM TITLE:** Discussion Regarding Restructuring the DDA Director Position

**DATE:** June 3, 2013

**PRESENTED BY:** Rob Straebel

**ATTACHMENTS:** Current Job Description

**BACKGROUND INFORMATION:** HR Assistant Jennifer Nash and I attended the DDA meeting and discussed with Board members the vacant DDA Director position. There was generally consensus from DDA board members that the Director position is not a full-time position anymore because of the number of projects that have been completed in the last 5-6 years.

The DDA discussed recruiting a full-time employee and sharing the costs with the City (30hrs-10hrs?, 20hrs/20hrs? TBD). The position would be in charge of business recruitment and retention for the entire City and not just within the DDA boundaries. There could be other duties assigned such as grant writing or other special projects. We are working on a revised job description and would like City Council to consider the proposal.

A competitive salary for the position would be in the \$40,000 to \$45,000 range. For illustrative purposes and using the high end of the salary range, a breakdown of the costs for the DDA and City's General Fund would be as follows using the current 79% fringe benefit factor:

$$\$45,000 \times 79\% = \$80,550$$

20 hours DDA/20 hours City

\$40,275/\$40,275

30 Hours DDA/10 Hours City

\$60,412.50/\$20,137.50

**RECOMMENDATION:** Discussion. Creating one position for economic development for the entire City reduces the personnel costs for the DDA substantially which is desired by their board and is prudent. The City would increase our personnel costs by \$20,138 but would have one contact person for the entire City for business recruitment/retention, assistance on grant writing and other special projects. We have not begun recruitment for the position as yet. We are looking for consensus from the City Council on how to proceed.

## CITY OF CHARLEVOIX

**Title:** Executive Director, Downtown Development Authority  
**FLSA:** Exempt  
**STATUS:** Full-time, non-union

**Department:** Downtown Development Authority (DDA)

**Reports To:** Downtown Development Authority Board  
City Manager (daily supervision)

**Supervises:** Occasional contract employee supervision may be required

**Date:** October 22, 2012

### **Position Purpose**

Initiates and coordinates the downtown revitalization program for the City of Charlevoix. Represents the Charlevoix Downtown Development Authority (DDA) to public and private interest groups, assisting the DDA in developing, preserving, and promoting a consistent and positive image of the City of Charlevoix.

### **Scope**

The DDA, which is composed of the Mayor and eight mayoral appointees was organized on April 19, 1982 and given the following responsibilities:

- to correct and prevent deterioration in the downtown development district
- to encourage historic preservation
- to create and implement development plans, and
- to promote economic growth.

Hence, the Executive Director operates in a highly visible and political environment in which integrity, initiative, and strong communication and facilitation skills are essential.

### **Essential Job Functions**

Work with the DDA Board to establish goals, priorities, and an annual operating budget that support the DDA's mission.

Promote downtown Charlevoix as an ideal location in which to own and operate a year-round business. Facilitate the retention of current downtown businesses. Conduct targeted recruitment of existing region businesses and out-of-region businesses. Advance downtown Charlevoix as an activity/ shopping destination via earned and social media, paid advertisements and other efforts.

Collaborate with the Charlevoix Area Chamber of Commerce, Charlevoix Convention & Visitors Bureau and other appropriate public and private entities to implement complementary multi-pronged marketing campaigns and develop activities, promotions, and events frequenting and showcasing the downtown area, e.g., the downtown tree lighting program.

Participate in negotiations for the acquisition, disposition, or lease of real estate for downtown development projects.

Work with other department heads to initiate and manage select physical and infrastructure improvement projects in downtown Charlevoix. Assist the DDA Board in selecting consultants

through the development of requests for qualifications (RFQ) and requests for proposals (RFP) in conjunction with City staff. Monitor projects' schedule, budget, and performance for the Board.

Monitor local, state, and federal legislation and regulations relating to downtown development and report findings, trends, etc. Work with appropriate local, state, and federal public agencies and non-profit foundations to seek funding, write grants, etc. Assist in implementation of award(s).

Maintain a comprehensive inventory of available buildings and sites in the downtown areas for economic development purposes and respond to requests for information.

Act as ombudsman/mediator in downtown business owner disputes with city departments.

Carry out administrative actions to support the DDA, including but not limited to purchasing and accounting duties and the preparation of agendas, reports, minutes, budget recommendations, notices, and correspondence. Maintain DDA Office files and records.

#### **Minimum Qualifications**

- Bachelor's degree in public administration, public relations, government affairs, business, or related field.
- Five years progressively responsible experience in business development and/or marketing function (within a resort community environment preferred), including experience with grant writing and the procurement process. Demonstrated initiative and success in economic/community development.
- Knowledge of strategic planning, project management, public relations, citizen participation focus groups, and progressive/creative management techniques.
- Knowledge of land use planning, zoning, and development.
- Customer service/citizen satisfaction orientation.
- Strong written and oral communication skills, including interpersonal/public relations; facilitation, collaboration, and negotiation skills. Must be able to work effectively with business owners, contractors and vendors, local and state officials including Airport, City and City Council staffs; FAA and MDOT representatives; and the general public.
- Ability to network within the community and to maintain strong, credible contacts.
- Professional demeanor and the ability to project a positive public image of the City of Charlevoix.
- Computer proficiency including MS Office (Word, Excel, PowerPoint, and Outlook).
- Ability to meet deadlines.

The information contained in this position description is intended to describe the general content and requirements for successful performance of the job. It is not an exhaustive list of duties, responsibilities or requirements. Additional duties and requirements may be assigned at the sole discretion of the City. Hence, the job description does not constitute an employment agreement between the employer and employee and is subject to change by the employers as the needs of the employer and requirements of the job change. The position is an at-will position.

DDA Approval: October 22, 2012  
City Council Approval: November 19, 2012