

Scott Dzurka
Mayor

Brad Gurski
Vice Mayor

Eric Hufnagel
Commissioner

Jean Ruestman
Commissioner

Chris Hyzer
Commissioner



Chad A. Gamble, P.E.
City Manager

Mindy J. Seavey
City Clerk

Kristina Kinde
City Treasurer

Michael Homier
City Attorney

Justin Smith
Director of Public
Services

**CITY OF ST. JOHNS
CITY COMMISSION MEETING
PROPOSED AGENDA**

**Monday, July 24, 2023, 6:00 p.m.
Room 2200 – Clinton County Courthouse**

***Listen to Meeting Via Telephonic Conference**

Dial 1 929 205 6099

<https://zoom.us/j/2050014286>

Meeting ID: 205 001 4286

***Please note, you will not be able to make public comments through Zoom;
only in-person attendants will be able to participate in public comments.**

A. OPENING: (6:00 pm – 6:05 pm)

1. Invocation
2. Pledge of Allegiance
3. Consent Agenda (*Action Item*)

The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:

- a. Approval of Minutes
-Regular meeting of June 26, 2023
- b. Receipt of Warrants
-In the amount of \$583,747.32
- c. Renewal of Liability & Property Insurance
-The City Manager recommends to the City Commission that MML is designated as a Sole Source Vendor as the MML can supply the City with a superior product and service regarding the provisioning of the required insurance for the City in the most cost-effective means. It is further recommended that the City renews the contract for liability and property insurance coverage with the Michigan Municipal League.

- d. Insituform – Contract Amendment
 - Staff recommends the city commission approve the change order from Insituform Technology in the amount of \$145,846.00 to install CIPP lining and authorize the mayor and clerk to sign the “stipulated price” agreement and change order as amended by the city attorney.
- e. Asphalt Restoration Inc. – Over Band Crack Seal
 - Staff recommends the city commission approve the recommendation to use Asphalt Restoration Inc. to complete the over band crack seal process for the 2023 late summer early fall application.
- f. Michigan Paving & Materials Agreement – Street Program
 - Staff recommends the city commission approve the agreement with Michigan Paving & Materials contingent on the city attorney’s review and authorize the mayor and clerk to sign.
- g. Youngstrom Contracting Agreement – BR US-127 Intersection at Walker Road
 - Staff recommends the city commission approve the agreement with Youngstrom Contracting contingent on the city attorney’s review and authorize the mayor and clerk to sign.
- h. Dump Trailer Approval
 - Staff recommends the city commission approve the purchase of the dump trailer from US 27 Motorsports in the amount of \$12,199.00.

4. Approval of Agenda: *(6:05 pm – 6:07 pm) [Action Item](#)*

B. PUBLIC HEARINGS:

C. PERSONS WISHING TO PRESENT TESTIMONY:

- 1. Public comment - agenda & non-agenda items *(6:07 pm – 6:10 pm) [Discussion only](#)*
Each speaker is only entitled to one (1) three-minute time during each Public Comment period.

D. COMMUNICATIONS:

E. OLD BUSINESS:

F. NEW BUSINESS:

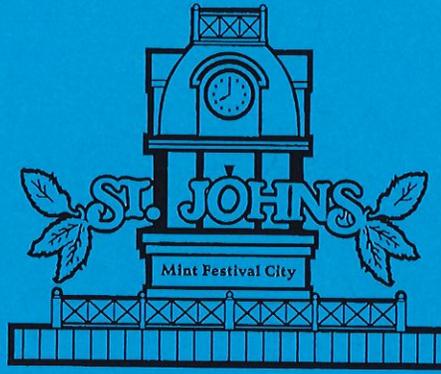
- 1. City Commission – Board & Committee Assignments *(6:10 pm – 6:15 pm) [Action Item](#)*
(Presenter: Scott Dzurka, Mayor)
- 2. Construction Equipment Lease/Purchase *(6:15 pm – 6:20 pm) [Action Item](#)*
(Presenter: Justin Smith, Director of Public Services)
- 3. Resolution #19-2023 - Resolution to Introduce an Ordinance to Repeal and Replace Chapter 54 of Title V of the Code of Ordinances to Provide for Industrial Pretreatment Regulations (Ordinance #677)
(6:20 pm – 6:30 pm) [Action Item](#)
(Presenter: Anne Seurnyck, City Attorney; Jordan Whitford, Wastewater Supervisor)

4. Resolution #20-2023 - Resolution to Introduce an Ordinance to Regulate the Keeping of Animals (Ordinance #678) (6:30 pm – 6:40 pm) [Action Item](#)
(Presenter: Chris Khorey, McKenna)
5. Resolution #21-2023 – Resolution to Introduce and Ordinance to Eliminate the Limit on Psychological Patients in Medical Facilities (Ordinance #679) (6:45 pm – 6:50 pm) [Action Item](#)
(Presenter: Chris Khorey, McKenna)
6. Resolution #22-2023 - Resolution Approving a Special Use Permit for 500 North Lansing Conditioned on Site Plan Approval (6:50 pm – 6:55 pm) [Action Item](#)
(Presenter: Chris Khorey, McKenna)
7. 2024 Elections – Early Voting (6:55 pm – 7:05 pm) [Action Item](#)
(Presenter: Mindy Seavey, City Clerk)
8. Social District in the DDA (7:05 pm – 7:15 pm) [Discussion only](#)
(Presenters: Chad Gamble, City Manager; Heather Hanover, PSD/DDA Director)
9. City Manager Comments (7:15 pm – 7:20 pm) [Discussion only](#)
10. Commissioner Comments (7:20 pm – 7:30 pm) [Discussion only](#)

G. ADJOURNMENT: (7:30 pm)

(Next Regular Meeting Scheduled for **Monday, August 28, 2023, 6:00 p.m.**)

NOTICE: People with disabilities needing accommodations for effective participation in this meeting should contact the city clerk 989-224-8944 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodation.



CONSENT AGENDA

CITY OF ST. JOHNS

CITY COMMISSION MINUTES

JUNE 26, 2023

The regular meeting of the St. Johns City Commission was called to order by Vice Mayor Dzurka at 6:00 p.m. at the Clinton County Courthouse, 100 East State Street, 2nd Floor, Suite #2200, St. Johns, Michigan.

COMMISSIONERS PRESENT: Eric Hufnagel, Jean Ruestman, Brad Gurski, Scott Dzurka, Chris Hyzer

COMMISSIONERS ABSENT: None

STAFF PRESENT: Kristina Kinde, Interim City Manager/Treasurer; Mindy J. Seavey, City Clerk; Justin Smith, Director of Public Services; Anne Seurnyck, City Attorney

FILLING OF VACANCIES, FILLING OF MAYOR, VICE MAYOR IF NEEDED

Vice Mayor Dzurka discussed beginning of the filling the vacancies of mayor and vice mayor.

There was a discussion that this isn't a reorganization and at this time only the position of mayor needs to be filled. The vice mayor position would only need to be filled if needed.

Motion by Commissioner Ruestman and seconded by Commissioner Gurski that the city commission correct the agenda to reflect Filling of Vacancies, Filling of Mayor, Vice Mayor if needed.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Vice Mayor Dzurka opened the nominations for mayor.

Commissioner Ruestman nominated Eric Hufnagel for Mayor. She discussed her reasons for nominating him.

There was a discussion on whether a second is required for a nomination.

Commissioner Gurski nominated Scott Dzurka for Mayor. He discussed his reasons for nominating him.

There were no other nominations.

Motion by Commissioner Gurski seconded by Commissioner Ruestman to close the nominations.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Vice Mayor Dzurka asked for a vote on the nomination for Eric Hufnagel as mayor.

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel to appoint Eric Hufnagel as mayor.

Clerk Seavey called a roll call vote:

YEA: Ruestman

YEA: Hufnagel

NAY: Gurski

NAY: Hyzer

NAY: Dzurka

Motion failed.

Motion by Commissioner Gurski seconded by Commissioner Hyzer to appoint Scott Dzurka as mayor.

Attorney Seurnyck said if passed, the vice mayor position automatically becomes vacant.

Clerk Seavey called a roll call vote:

YEA: Gurski

YEA: Ruestman

YEA: Hyzer

YEA: Hufnagel

YEA: Dzurka

NAY: None

Motion carried.

Mayor Dzurka thanked the commissioners for their support.

Commissioner Ruestman nominated Eric Hufnagel for Vice Mayor. She discussed her reasons for nominating him.

Commissioner Dzurka nominated Brad Gurski for Vice Mayor. He discussed his reasons for nominating him.

There were no other nominations.

Motion by Commissioner Ruestman seconded by Commissioner Hyzer to close the nominations.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel to appoint Eric Hufnagel as vice mayor.

Clerk Seavey called a roll call vote:

YEA: Ruestman

YEA: Hufnagel

NAY: Gurski

NAY: Hyzer

NAY: Dzurka

Motion failed.

Motion by Commissioner Hyzer seconded by Commissioner Dzurka to appoint Brad Gurski as vice mayor.

Clerk Seavey called a roll call vote:

YEA: Gurski

YEA: Ruestman

YEA: Hyzer

YEA: Hufnagel

YEA: Dzurka

Motion carried.

Mayor Dzurka assumed the chair and asked if any of the commissioners or persons present wished to discuss any of the items on the consent agenda.

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the consent agenda be approved as presented.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

a. Approval of Minutes

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the minutes of the May 18, 2023 special meeting and May 22, 2023 regular meeting be approved as presented.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None
Motion carried.

b. Approval of Warrants

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that warrants be approved as presented in the amount of \$583,206.93.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

c. Motorola Service Agreement – Patrol Car Onboard Video Camera System

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission ratify the service agreement with Motorola for the warranty extension on all cameras in the amount of \$1,825.00 and authorize the mayor or vice mayor to sign.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

d. Year End Budget Adjustments

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission approve the year end budget adjustments as per City Treasurer Kinde's memo.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

e. Principal Shopping District/Downtown Development Authority Appointment

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission reappoint Corinne Trimbach to the Principal Shopping District and Downtown Development Authority Boards as recommended (terms expiring June 30, 2027).

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

f. Revision of Section #320 of the Personnel Manual – Personal Protective Footwear Reimbursement

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission approve the revision of section #320 of the Personnel Manual.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

g. Police Department National Night Out Donations

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission approve the police department sending out letters to local businesses and service groups soliciting donations for the National Night Out program.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

h. National Night Out 2023 Proclamation

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission adopt the National Night Out 2023 Proclamation and authorize the mayor and clerk to sign.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

i. Clinton County Road Commission – Chip Seal Agreement on Scott Road & Walker Road

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission ratify the agreements with the Clinton County Road Commission and authorize the mayor or vice mayor and city clerk to sign the agreements.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

j. Phone System - Spectrum VoIP

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission ratify the Commercial License Agreement with Spectrum and authorize the mayor or vice mayor to sign and authorize staff to complete and sign the other necessary paperwork to transfer our phone numbers over to Spectrum.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

k. Personnel Policy #305 - Holidays

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission approve the revision to section #305 of the Personnel Manual.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

l. Automatic Door Locks - Depot and Park

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission approve the door lock proposals from Knight Watch.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

m. Merit Bonuses

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission award merit bonuses to all three individuals who successfully passed Drinking Water Exams.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

n. Higham Street Parking Lot Engineering & Design

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission approve the proposal from Wolverine Engineers and Surveyors and authorize the mayor or vice mayor and clerk to sign.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

AGENDA

Mayor Dzurka asked if there were any additions or deletions to the agenda.

There were none.

Motion by Commissioner Gurski seconded by Commissioner Hufnagel that the city commission approve the agenda as presented.

AGENDA

A. OPENING:

1. Invocation
2. Pledge of Allegiance
3. Filling of Vacancies: Filling of mayor, and vice mayor, if needed.
4. Consent Agenda

The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:

- a. Approval of Minutes
 - Special meeting of May 18, 2023
 - Regular meeting of May 22, 2023
- b. Approval of Warrants
 - In the amount of \$583,206.93
- c. Motorola Service Agreement – Patrol Car Onboard Video Camera System
 - Staff recommends that the city commission ratify the service agreement with Motorola for the warranty extension on all cameras in the amount of \$1,825.00 and authorize the mayor or vice mayor to sign.
- d. Year End Budget Adjustments
 - Staff recommends that the city commission approve the year end budget adjustments as per City Treasurer Kinde’s memo.
- e. Principal Shopping District/Downtown Development Authority Appointment
 - The St. Johns PSD/DDA Boards of Directors recommends the city commission reappoint Corinne Trimbach to the Principal Shopping District and Downtown Development Authority Boards as recommended (terms expiring June 30, 2027).
- f. Revision of Section #320 of the Personnel Manual – Personal Protective Footwear Reimbursement
 - Staff recommends the city commission approve the revision of section #320 of the Personnel Manual.
- g. Police Department National Night Out Donations
 - Staff recommends the city commission approve the police department sending out letters to local businesses and service groups soliciting donations for the National Night Out program.
- h. National Night Out 2023 Proclamation
 - Staff recommends that the city commission adopt the National Night Out 2023 Proclamation and authorize the mayor and clerk to sign.

- i. Clinton County Road Commission – Chip Seal Agreement on Scott Road & Walker Road
 - Staff recommends the city commission ratify the agreements with the Clinton County Road Commission and authorize the mayor or vice mayor and city clerk to sign the agreements.
 - j. Phone System - Spectrum VoIP
 - Staff recommends that the city commission ratify the Commercial License Agreement with Spectrum and authorize the mayor or vice mayor to sign and authorize staff to complete and sign the other necessary paperwork to transfer our phone numbers over to Spectrum.
 - k. Personnel Policy #305 - Holidays
 - Staff recommends the city commission approve the revision to section #305 of the Personnel Manual.
 - l. Automatic Door Locks - Depot and Park
 - Staff recommends the city commission approve the door lock proposals from Knight Watch.
 - m. Merit Bonuses
 - Staff recommends the city commission award merit bonuses to all three individuals who successfully passed Drinking Water Exams.
 - n. Higham Street Parking Lot Engineering & Design
 - Staff recommends the city commission approve the proposal from Wolverine Engineers and Surveyors and authorize the mayor or vice mayor and clerk to sign.
4. Approval of Agenda:

B. PUBLIC HEARINGS:

C. PERSONS WISHING TO PRESENT TESTIMONY:

- 1. Public comment - agenda & non-agenda items

D. COMMUNICATIONS:

E. OLD BUSINESS:

- 1. Parks and Recreation Board Recommendation – Main Park Road Closure

F. NEW BUSINESS:

- 1. King Media Invoices
- 2. Resolution to Comply with the Provisions of Public Act 152 of 2011 (#16-2023)
- 3. Resolution #17-2023 to Adopt an Ordinance to Adopt a Supplement to the Code of Ordinances #676
- 4. Sparks Grant Resolution (#18-2023)
- 5. Fantasy Forest – Fiscal Agent Letters
- 6. Jeep Track Expansion
- 7. Street Program Bids

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8. St. Johns Chamber of Commerce Special Event – Mint Festival – August 11 – 13, 2023
 9. Principal Shopping District/Downtown Development Authority Special Event – Mint Festival Down at the Depot – August 11 & 12, 2023 & Application for Alcohol Use or Sale
 10. Planning Commission – Acceptance of Resignation of James Ensign from the Planning Commission and Appointment to Fill Two Vacancies
 11. City Offices Discussion
 12. Commissioner Comments

G. ADJOURNMENT:

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

PUBLIC HEARINGS

PERSONS WISHING TO PRESENT TESTIMONY

1. Public Comment

Mayor Dzurka asked if there were any public comments.

Carolyn Smith, resident, was present. She discussed her concerns with the drag show that was held downtown on June 3rd and discussed the application for events.

Cheryl Nodarse, resident, was present. She thanked the St. Johns Call In Coalition for putting together the event and making us proud to be part of the community.

Cheryl Cole, resident, was present. She discussed her concerns with spending, the Wilson Center, city roads, King Media, the decorum of commissioners, and taxes.

Andrea Ryan, co-founder of the St. Johns Call In Coalition, was present. She thanked the commissioners for supporting the Pride Fest and also thanked law enforcement.

Lori Zelenka, resident, was present. She discussed the purchase agreement, legal documents, quality of Zoom meetings, the Wilson Center spending, King Media, the Sugar Bowl building, the city charter, mayor position, and leaf pick-up.

Roberta Cocco, resident, was present. She discussed lack of transparency, King Media invoices, and statements released recently by the city.

Brian Mills was present. He said he submitted an application for appointment to the planning commission or any other commission. He discussed his background and thanked the commission for their consideration.

Kelly McCausey, resident, was present. She thanked everyone for the Pride Fest. She discussed seeing the commission give each other respect even when they disagreed and thanked everyone.

Mayor Dzurka thanked them for their time and important issues. He said the commission comments would be at the end of the meeting.

COMMUNICATIONS

OLD BUSINESS

1. Parks and Recreation Board Recommendation – Main Park Road Closure

Recreation Director Schafer said this came before you two months ago and we are bringing back estimates for you to consider. They solicited 3 and received 2 back: Dewitt Fence and Maco Tool. Staff is recommending Dewitt Fence.

There was a discussion of:

- The two options and their differences.
- The location of the gates.
- The purpose of the gates.

Motion by Commissioner Gurski seconded by Commissioner Ruestman that the city commission move forward with Dewitt Fence for \$8,900.00.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

NEW BUSINESS

1. King Media Invoices

Mayor Dzurka said he wanted to address this. He said the city attorney had a chance to review the process and content of invoices. He said he wanted to take the opportunity today to put an issue to rest regarding the King Media contracts:

- The former mayor made allegations regarding the City's handling of these contracts, so we wanted to set the record straight.

-
- The City agreed to pay a monthly consulting contract of \$4,000 per month for the June 1, 2022-June 30, 2023. The cost of that includes 20 hours of work. However, if the City requested work over that 20-hour limit, King Media would charge a rate of \$200 per hour. He clarified this was not a “flat fee” contract. There were a number of months where the City needed and requested services that exceeded the \$4,000 monthly service amount. The City received invoices that explained the services and the additional hours, several of which involved the former mayor such as phone calls with the mayor, direct work with the mayor, or work with her initiative Coffee with a Cop, and the Wilson Center was a major request from this body and the mayor. There was a request for board and committee one-page documents, also communication for the parking plan and signage and pre-work was begun. The invoices were presented at regular meetings to the City Commission as part of the bill paying process and for our review. The City Commission understood what services King Media provided and did not need any other additional information or detail from King Media to approve the bills. All received copies of bills since this issue was raised. Although the City has spent significant time over the last few months on this issue trying to resolve the issue, the allegations continue to be raised.

Attorney Seurnyck said the biggest misunderstanding this is a \$4,000 contract and they were spending in excess. This is a contract that has two different pricing structures: \$4,000 per month for 20 hours. The city is in control of what you ask them to do. The contract also has \$200 per hour for over 20 hours in it. She said it is not a flat fee contract and it is up to you as a city to decide what is appropriate. There is a misconception that the city treasurer has hidden invoices. You all have seen those and had a chance to ask questions.

Mayor Dzurka said a point was raised earlier on the contract itself and getting preauthorization for amounts.

Attorney Seurnyck read that portion of the contract “King Media will provide estimates” and said sometimes clients want an estimate, but they don’t think it is unusual if you call them up and they do the work. It doesn’t mean you violated the contract because the estimates were not provided.

Commissioner Ruestman said one of the criticisms was a lack of effective communication to the public, which is why we entered into a contract with them. We felt those were important communications and it was work above and beyond what the staff could do since they are already extremely busy.

Mayor Dzurka said everyone has the bills. We went back to requests from this body. Our option, if we get into a larger project, is to get bids like we did our last meeting with the signs. We may want to examine further costs before an action is taken. He said he would like to move forward from this:

- (1) The City Commission has been presented with the invoices for monthly consulting services from King Media;
- (2) Those invoices identified work that King Media performed for the City that exceeded the monthly hours and consulting service amount of \$4,000;
- (3) The City Commission understood what additional work was requested and has been completed by King Media as well as the time reconciliation for those projects and we require no additional information from King Media regarding those services;
- (4) Although the City Commission has approved the invoices as part of its bill payment process, there appears to be some belief by members of the public that the City did not understand the expenses, approve the expenses, or that the expenses were not in compliance with the contract.
- (5) To move forward, I suggest that the City Commission ratify the approval for the invoices for the June 1, 2022 to May 31, 2023.

Motion by Commissioner Hufnagel seconded by Commissioner Ruestman that the city commission ratify the approval for the invoices from June 1, 2022 to May 31, 2023.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

2. Resolution to Comply with the Provisions of Public Act 152 of 2011 (#16-2023)

City Clerk Seavey said the city has opted-out annually since 2015. This year, we have potential to be over the hard cap due to our funding of the HSA and potential HRA funding. She said staff recommends the city commission adopt the resolution to exempt us from PA 152. By adopting this resolution to opt-out, we are in compliance and we are keeping this on our radar annually.

There was a discussion of the reason for opting-out.

Motion by Commissioner Hyzer seconded by Commissioner Gurski that the city commission adopt Resolution #16-2023 – Resolution to Comply with the Provisions of Public Act 152 of 2011.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

3. Resolution #17-2023 to Adopt an Ordinance to Adopt a Supplement to the Code of Ordinances #676

City Clerk Seavey said annually we have American Legal codify any ordinances we have adopted through the last year. The S-17 supplement includes Ordinances #665 through #672. We are able to adopt this ordinance at the meeting tonight without introducing it.

Motion by Commissioner Gurski seconded by Commissioner Hufnagel that the city commission adopt Resolution #17-2023 to Adopt an Ordinance to Adopt a Supplement to the Code of Ordinances #676.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

4. Sparks Grant Resolution (#18-2023)

Recreation Director Schafer said this is a Sparks Grant Resolution. He said this is the COVID money available by the state and administered by the DNR. This would help to replace Fantasy Forest. There is not a match required for this grant.

There was a discussion of:

- COVID money
- Turn-around time on grants
 - Should find out in September
- This is the second round. They funded 24 projects in the first round and our grant application was number 1,097.

Motion by Commissioner Gurski seconded by Commissioner Hyzer that the city commission adopt Sparks Grant Resolution (#18-2023).

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

5. Fantasy Forest – Fiscal Agent Letters

Interim City Manager Kinde said there are two different letters to be approved separately. The first is for a Sparks Grant and the second is a general approval. Also, we would be the fiscal agent for money coming in.

Motion by Commissioner Ruestman seconded by Commissioner Gurski that the city commission approve the support letter for the sparks grant for Fantasy Forest.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Motion by Commissioner Hufnagel seconded by Commissioner Hyzer that the city commission adopt the general support letter for Fantasy Forest acknowledging the city as fiscal agent.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

6. Jeep Track Expansion

Recreation Director Schafer said the Mint City Off Road Foundation is currently running the Jeep track and looking to expand. They want to run up to 3 courses: beginner, intermediate and advanced. Right now, their agreement has a 1-year automatic renewal. If approved, they want a 3-year commitment. Right now, this land is under contract to be farm land so it would start January 1st. We can lease property that is still there as farm land.

There was a discussion of:

- The attorney reviewed the agreement.
- The relationship with the group.
- Restoring land to what it was before, at the end of an agreement.
- Removing Community Development Director from the agreement.

Motion by Commissioner Gurski seconded by Commissioner Ruestman that the city commission approve the lease and direct the city attorney to clarify the restoration of property would be to 2018, and removing reference to community development director.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

7. Street Program Bids

Director Smith said this will begin years 11 to 15 of our street millage. We are excited about this and they are really great projects. He discussed the five areas that will be done this year. We entered into a contract with C2AE to assist us with this. We will not be starting the projects until after July 1st. We received two bids: Michigan Paving &

Materials and Rieth Riley. He discussed the bids. He said we would be approving the bids tonight and in July will bring the contract with Michigan Paving and Materials to you for ratification.

There was a discussion of:

- How the quote compared to our budget.
 - The quote is below our budget.
 - At the end of the 5-year cycle, if we have additional funds, we will try to do another street or sidewalks.

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that city commission accept the bid from Michigan Paving.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

8. St. Johns Chamber of Commerce Special Event – Mint Festival – August 11 – 13, 2023

Interim City Manager Kinde said this is the permit application for Mint Festival. She said most permits do not come to the city commission, but this asks us to forgive some costs for police and DPW. She discussed the Mint Festival special event request and items we won't be able to do.

Motion by Commissioner Hufnagel seconded by Commissioner Gurski that the city commission approve the special event permit for the Mint Festival August 11-13.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

9. Principal Shopping District/Downtown Development Authority Special Event – Mint Festival Down at the Depot – August 11 & 12, 2023 & Application for Alcohol Use or Sale

Executive Director Hanover said this will be held in the third block of Clinton Avenue. The alcohol use you approve is for during the car show. They will have two bands on Friday and Saturday nights and a cornhole tournament also.

Motion by Commissioner Ruestman seconded by Commissioner Hyzer that the city commission approve the special event application for alcohol use or sale during the Mint Festival.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

10. Planning Commission – Acceptance of Resignation of James Ensign from the Planning Commission and Appointment to Fill Two Vacancies

Mayor Dzurka said the planning commission has been having issues with getting a quorum.

Motion by Commissioner Hufnagel seconded by Commissioner Hyzer that city commission accept the resignation of James Ensign from the Planning Commission.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Mayor Dzurka said we will be filling two spots for the planning commission. He thanked those who have applied. He asked for feedback on applicants. He discussed interactions with James Eshelman and we heard from Brian Mills this evening.

Commissioner Hufnagel said he agrees with your assessment.

Attorney Seuryneck said you need to state who you want to appoint individually and the appointment has to be approved by the body.

Mayor Dzurka said we have two different terms: 2024 & 2025.

Mayor Dzurka recommended Brian Mills be appointed to fill out the seat that expires 11/2024.

Motion by Commissioner Ruestman seconded by Commissioner Gurski that city commission appoint Brian Mills to the Planning Commission (term ending 11/2024).

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

Mayor Dzurka recommended James Eshelman be appointed to fill out the seat that expires 11/2025.

Motion by Commissioner Hufnagel seconded by Commissioner Hyzer that city commission appoint James Eshelman to the Planning Commission (term ending 11/2025).

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

11. City Offices Discussion

Mayor Dzurka said in previous meetings we discussed our lease with the county. We opted to not move offices to the Wilson Center and wanted to look at other options.

Interim City Manager Kinde said she talked with John Fuentes, County Administrator. We put conversations on hold due to security and changes to security. She discussed our indirect costs with the county and one of the areas that came up was the amount the city was paying for security. She said now there is going to be a change with security. She reached back out and he is willing to restart a conversation. He can't speak to the interest of the board, but will continue discussions with the city commission. She said we have \$800,000 sitting in escrow with the county.

Mayor Dzurka asked if there were questions on the lease or opportunities we wanted to discuss with the county and if there were any additions to that?

Commissioner Hufnagel said we need a broader discussion. He said over the years we had discussions periodically and a couple of opportunities that came to our attention. We looked at the Congregational Church when it was up for sale and it was more of a reactive review to it and we had to come up with information quickly. He said the same thing happened with the Wilson Center. He said it would behoove us to have that conversation for occupancy at this point. He said he would like to have a broader conversation and not be in a reactive mode. We have a new city manager that's coming in and it is a perfect time to bring him in.

Commissioner Ruestman said with security, everyone coming into the building will go through security. What is the cost allocation based on?

Interim City Manager Kinde said it is based on square footage. We are treated as any department here in the county and there are various line items. We pay close to \$90,000 per year. Security was the area we thought we had a lot of room for negotiation.

There was a discussion of:

- The cost allocation plan.

-
- If there is any way to know how many people coming into the building are here for the city or the county.
 - What services we provide compared to the county.
 - Needing to have something measurable.
 - Will need the input and assessment of the new city manager.
 - A space needs study has been done (with commission chambers and without).
 - Put this on the city manager's long-range to-do-list.
 - May want to form a new ad hoc committee.

12. Commissioner Comments

Commissioner Gurski thanked them for support on being vice mayor. He said he wanted to address a few things tonight. He thanked Ms. Kelly for her comments. He said this job is not easy or fun and he is not doing it for personal gain. He said taxes and costs are going up and the tax rate and millage is what it is; it's capped and that's where it's at. He said we capture more money by selling and building of new homes. The assessment goes up, but the tax rate stays the same. He said he agrees with a full charter review. With how outdated the document is, it is almost impossible to follow and it is not going to be an easy process. It is going to take a long time and we can't just change it; it has to be a vote of the people and a committee formed. He said he keeps hearing the transparency buzz word. Transparency is interesting and is something people want to see. Everybody has a different truth or different belief and sometimes we don't like the truth. Finally, talking about mayor and vice mayor, our last meeting was a side show and entertainment worthy and he is hoping a new charter can address some of those things. By charter, mayor and vice mayor are ceremonial heads of this meeting here. We operate as one unit; besides an emergency, we are one unit. He said lots of people get confused. Our Charter is different. Those are some facts. Truth not transparency. He thanked Mr. Thelen for attending the ambulance board meeting last month and said he has full trust and faith in Mr. Thelen. He said there is nothing exciting to report, just changes in personnel.

Commissioner Ruestman thanked Commissioner Gurski for his comments. She said she wanted to address that she was told she was being disrespectful when she spoke, when she looked down, or tried to write notes. She said she can't apologize for how her face looks when writing notes. She said she takes offense she was only one who was called out. She asked for respect to be given both ways. She did attend Pride Day and had a fabulous time and there was lots of love. She said the drag show was incredibly entertaining and she has seen less clothing in other places. She said there were people of all ages and people were respectful to one another. She was pleased people were made to feel welcome and it was inclusive. She attended the kick-off for the summer reading

program at the library and it was very well attended. It is a great program the library puts on and is a huge asset to our community.

Commissioner Hufnagel said with the application for events, the events do not come to the commission unless it is a request to sponsor, co-sponsor or some type of staffing and financial support. Any contract this body considers goes to the and is fully vetted by the city attorney. He said with the comment about the old Sugar Bowl, it is a private building and it sat there for a very long time before the new owners took it on. He is glad the new owners wanted to take on and move forward. With respect to streets, it is a big deal to the community and had been a big deal for 40 years. Finally, as a commission we had a referendum and had the public decide whether they wanted to invest. We have a millage now and are in our 11th year and have made a lot of progress. We are very transparent on the decisions on the streets. We can't do everything all at once. We have an outstanding program every year and most years we come under cost. This is not exactly the way we want, but we are making progress. Many places are state trunk lines we have no control over. He said he is proud of the work staff has done.

Commissioner Hyzer said he appreciated city staff for all the help they have given him over the last month. He said questions were answered and documents sent. He congratulated the 3 individuals who have passed their water exams.

Mayor Dzurka thanked them for their support. As mayor, he will be responsible to city and residents and responsive to you. He hopes he can work closely with you. All 5 of us are leaders. He said he appreciated the opportunity. He said all of us show our leadership skills. On the roads, some areas were mentioned in ill repair and he believes those were water/sewer related.

Director Smith said it is very expensive to have a crew come in for one or two patches. We have them come in the spring or summer; we like to have patched up before the Mint Festival. We need to get a crew in to do multiple patches, it doesn't make financial sense to have them come in and patch a small area.

Mayor Dzurka said he is excited to look at the city charter as well. We can also make minor changes if we see something we need to expedite. The Wilson Center was mentioned in public comments, but wasn't on the agenda. Commissioner Ruestman and I met with the attorneys regarding the condo documents. The construction documents will be coming back, and both will be back for the July meeting. Conversations are moving forward and going really well. Thank you to the DPW and kudos to the community on the Soapbox Derby event. He said the clean-up was done before businesses opened on Monday. Kudos on the improvements to the leaf pick-up and efficiencies. We penned a contract with Chad Gamble who is going to join us in July and we will be hosting a

community open house for Chad on July 12th up here. This gives people an opportunity to say hello to him and hopefully you can all introduce yourselves at the reception. He said he had an opportunity to go to a meeting on Dewitt Road and road construction. The State budget is being finalized this week and Dewitt road may be included. It is not in the city, but it will re-route trucks from the cheese factory. It will also affect 21 & 27. It will move from a local to a primary seasonal road and is slated to happen next year if successful in the budget. He recognized and thanked Interim City Manager Kinde. Thank you for double duties and you logged a lot of hours. Thank you for your work, we appreciate it.

Director Smith said he wanted to recognized Kristina for himself and staff. He said Kristina stepped in with strong leadership and he has respect for her. He discussed the unwarranted criticism she received. Thank you for myself and staff.

ADJOURNMENT

Motion by Commissioner Hyzer seconded by Commissioner Ruestman that the meeting be adjourned.

YEA: Hufnagel, Ruestman, Gurski, Dzurka, Hyzer

NAY: None

Motion carried.

The meeting was adjourned at 8:01 p.m.



MEMORANDUM CITY OF ST. JOHNS

To: St. Johns City Commission

From: Chad A. Gamble, P.E., City Manager
Mindy J. Seavey, City Clerk

Date: July 20, 2023

Subject: Insurance Renewal

On September 30, 2023, the various insurance policies the City has through the Michigan Municipal League (MML) based, Michigan Municipal Liability and Property Pool will expire. This insurance package includes property, automobile, liability, inland marine, errors and omissions, sewer back up and others.

The City has been very pleased with the MML insurance over the years. The Pool's Board of Directors is made up of municipal officials and they act in the best interest of the members, and they provide an excellent risk management program to keep losses and premiums down. Their claims service has been very good and fair. Some of the benefits of pooling with the MML are: broad coverage document written specifically for Michigan municipalities, services tailored to unique needs of Michigan municipalities, member assets controlled by an elected board of municipal officials, decisions made and problems resolved by a group of your peers, investment income and underwriting surplus us to benefit members, lower expenses through tax-exempt and non-profit status, training sessions (reduced rates), etc.

One of the components of our ongoing relationship with MML is the receipt of dividends. If we renew with the MML, we are due for another dividend check after October 1st. Last year, we received a dividend check of \$13,740.00 and on October 1, 2023 we will receive \$11,8363.00. If we do not renew with the MML, we will not receive this dividend check.

If MML is not selected as the insurance provider the City would be required to receive bids for its insurance package and staff would also need to prepare specifications, solicit bids, and notify the Pool. We would have to notify them by August 1st (60 days before renewal) if we wish to solicit bids.

When we receive our official renewal rate from the MML, it will be brought to the commission for your final approval.

SOLE SOURCE AND INSURANCE RENEWAL CONTRACT RECOMMENDATION: In accordance with the City's Purchasing Policy, the City Manager recommends to the City Commission that MML is designated as a Sole Source Vendor as the MML can supply the City with a superior product and service regarding the provisioning of the required insurance for the City in the most cost-effective means. It is further recommended that the City renews the contract for liability and property insurance coverage with the Michigan Municipal League.



MEMORANDUM
CITY OF ST. JOHNS
Department of Public Services
Wastewater Division

Date: July 11, 2023

Attn: Chad A Gamble P.E., City Manager
Justin Smith, Director of Public Services

From: Jordan Whitford, Wastewater Division Supervisor

Re: Sanitary Sewer Lining Contract Change Order

In February bids were sent out for CIPP (Cured in Place Pipe) lining for the 22-23 budget year. Following the formal bidding process a contract was entered into with Insituform Technologies to complete the lining within the designated areas budgeted for.

Following our annual televising and assessment of sanitary sewers this spring there were many significant defects and issues found within the televised areas. Some of these areas being larger transmission sewer mains.

Having conversations with Insituform about the issues which were found, they were willing to add the additional work at the same or better price to the already in place contract and provided staff with a change order to authorize the additional lining.

Recommendation: City Commission approves the change order from Insituform Technology in the amount of \$145,846.00 to install CIPP lining. Monies for this project are budgeted for in the current 23-24 F.Y budget under line item 592-560-818.077. The City Attorney has reviewed the subject proposal and has indicated it is legally sufficient.



Insituform Technologies USA, LLC
 1088 Victory Dr.
 Howell, MI 48843
 Tel: (517) 546-4107
 Fax: (517) 546-4282
 www.insituform.com

July 7, 2023

To: Jordan Whitford, Wastewater Division Supervisor
 City of St. Johns, MI
 P: 989-224-8944 ext: 230
 C: 989-292-0604
 Email: jwhitford@ci.saint-johns.mi.us

**Project Name: 2023 Sanitary Sewer Rehabilitation Add-On Change Order 1
 St. Johns, MI**

Insituform Technologies USA, LLC, herein proposes to furnish this Change Order for all labor, materials, equipment, and services necessary to reconstruct the referenced project.

Assumptions and Qualifications

A site review was performed for this project. If conditions are materially different from those communicated to **Insituform Technologies USA, LLC.**, we reserve the right to void or renegotiate the pricing contained in this proposal.

The Owner/Prime Contractor will provide access to both ends of the line, traffic control, and point repairs if needed. Installation can be completed after point repairs and accesses to both ends are completed.

Change Order Pricing on Page 2

Change Order Inclusions

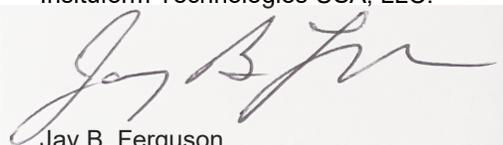
The prices stated in this proposal include:

1. All Terms and Conditions as set forth in the existing contract between ITUSA and the City of St. Johns, MI for the above referenced project.

Offered By:

Accepted By:

Insituform Technologies USA, LLC.



Jay B. Ferguson
 Business Development Manager

 Signature

 Name/Title

 Organization

Accepted by: Insituform Technologies USA, LLC.

 Date: _____

Insituform® Change Order –

Change Order Pricing

PAY ITEM	DESCRIPTION	QTY.	U/M	UNIT PRICE	AMOUNT
1	Mobilization 5% Max	1	LS	\$ 7,200.00	\$ 7,200.00
2	6-Inch Insituform® CIPP	692	LF	\$ 39.00	\$ 26,988.00
3	8-Inch Insituform® CIPP	1102	LF	\$ 44.00	\$ 48,488.00
4	12-Inch Insituform® CIPP	805	LF	\$ 56.40	\$ 45,402.00
5	Lateral Reinstatements	50	EA	\$ 146.60	\$ 7,330.00
6	30 Day Post CCTV	1150	LF	\$ 6.50	\$ 7,475.00
7	MOT	1	LS	\$ 1,650.00	\$ 1,650.00
8	Clean Up/Restoration	1	LS	\$ 540.00	\$ 540.00
9	Bypass Pumping 6" VCP @ .30 Slope	1	LS	\$ 100.00	\$ 100.00
10	Bypass Pumping 8" VCP @ 1.88 Slope	1	LS	\$ 88.00	\$ 88.00
11	Bypass Pumping 15" VCP @ .10 Slope	1	LS	\$ 192.00	\$ 192.00
12	Bypass Pumping 15" VCP @ .27 Slope	1	LS	\$ 190.00	\$ 190.00
13	Bypass Pumping 15" VCP @ .32 Slope	1	LS	\$ 203.00	\$ 203.00
TOTAL					\$ 145,846.00

AGREEMENT

This agreement is by and between City of St. Johns (“Owner”) and
Insituform Technologies USA, LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: 2023 Sanitary Sewer Rehabilitation.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Spicer Group, Inc.

3.02 The Owner has retained Spicer Group, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before **October 13, 2023**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **October 27, 2023**.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Line Item	Item Description	UofM	Quantity	Unit Price	Extension
1	Mobilization, Max 5%	LS	1	\$5,200.00	\$5,200.00
2	CIPP, 6-inch	LF	270	\$44.90	\$12,123.00
3	CIPP, 8-inch	LF	50	\$112.50	\$5,625.00
4	CIPP, 15-inch	LF	810	\$87.20	\$70,632.00
5	Lateral Reinstatement	EA	22	\$156.10	\$3,434.20
6	30-day Post-CCTV Inspection	LF	1150	\$6.50	\$7,475.00
7	Traffic Control	LS	1	\$3,959.30	\$3,959.30
8	Clean Up and Restoration	LS	1	\$540.70	\$540.70
9	Bypass Pumping 6-inch VCP @ 0.30% slope	LS	1	\$100.90	\$100.90
10	Bypass Pumping 8-inch VCP @ 1.88% slope	LS	1	\$88.00	\$88.00
11	Bypass Pumping 15-inch VCP @ 0.10% slope	LS	1	\$191.60	\$191.60
12	Bypass Pumping 15-inch PVC @ 0.27% slope	LS	1	\$189.20	\$189.20

13	Bypass Pumping 15-inch VCP@ 0.32% slope	LS	1	\$203.20	\$203.20
				Base Bid Total:	\$109,762.10

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment on or about the 5th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Performance bond.
 - 3. Payment bond.

4. General Conditions.
5. Supplementary Conditions.
6. Specifications as listed in the table of contents of the Project Manual.
7. The Drawings as listed on the document title page.
8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.
- B. **Equal Opportunity**
- Contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or because of a handicap that is unrelated to the person's ability to perform the duties of a particular job or position.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of St. Johns

By: _____

By: _____

Title: Mayor

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: City Clerk

Title: _____

Address for giving notices:

Address for giving notices:

100 E. State Street, Suite 1100

St. Johns, MI 48879

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.



MEMORANDUM CITY OF ST. JOHNS

To: Chad Gamble, City Manager
Justin Smith, Director of Public Services

From: Jeremy Ritter, Department of Public Works Supervisor

Date: July 10, 2023

Subject: Over band crack seal

The 2023-24 street maintenance program is scheduled to have the over band crack seal process completed this late summer early fall. The bidding process was completed by the Clinton County Road Commission. This program allows the City to receive the same pricing through the State of Michigan.

Asphalt Restoration Inc. \$1.14/lb.

The recommendation would be to use Asphalt Restoration Inc. to complete the over band crack seal process for the 2023 late summer early fall application.

This has been a budgeted item in current 2023-24 budget and funds are available.

Line number 202-463-818.050 of \$20,000

Line number 203-463-818.050 of \$20,000

Asphalt

RESTORATION, INC.

High Performance Asphalt Maintenance

7968 West G Avenue
 Kalamazoo, MI 49009
 Office: 269.353.3996
 Fax: 269.375.0722

Proposal

Date	Proposal #
7/11/2023	2035

City of St. Johns
 100 E State St.
 St. Johns, MI 48879

Terms	Estimator
Net 30 Days	Mike

Item	Description	Total
OverBand Crac...	Cracks to be repaired will be blown clean using 100 P.S.I. and filled using ASTM/MDOT approved sealant. The sealant will be heated and applied in accordance with all industry standards and ASTM/MDOT Standards. NOTE: Price \$ 1.14 per pound (price from Clinton County bid) Various streets in the City to be Overband Crackfilled NOTE: Not to exceed \$ 40,000.00	

We reserve the right to withdraw proposal if not accepted within 30 days. Acceptance of Proposal: The prices and specifications are accepted. Payment to be made as specified unless otherwise arranged. A 1-1/2% late fee will be charged to all accounts past due.

Total	\$0.00
--------------	---------------

Signature _____



MEMORANDUM

CITY OF ST. JOHNS

To: City Commission
Chad A Gamble P.E.; City Manager

From: Justin Smith; Director of Public Services

Date: July 17, 2023

Subject: Street Program Contracts

At the June City Commission Meeting the proposal from Michigan Paving and Materials was approved to complete the 2023 Street Program. Presented for your approval is the contracts for the approved pricing.

Recommendation: Approval and signature by the mayor for the Street Program contracts.

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of St. Johns ("Owner") and Michigan Paving and Materials Company ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Provide the City of St. Johns with a construction bidding package to perform capital preventative maintenance on the city's local street system for 2023.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Provide the City of St. Johns with a construction bidding package to perform capital preventative maintenance on the city's local street system for 2023.

ARTICLE 3—ENGINEER

3.01 The Owner has retained C2AE, 50 Louis St. NW, Suite 200, Grand Rapids, MI 49503 ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by C2AE.

ARTICLE 4—CONTRACT TIMES

4.01 *Time Is Of The Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before October 30, 2023, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 15, 2023.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
1	Mobilization, Max	LSUM	1	\$20,000	\$20,000
2	Curb and Gutter, Rem	Ft	700	\$15	\$10,500
3	Pavt, Rem	Syd	154	\$12	\$1,848
4	Sidewalk, Rem	Syd	130	\$15	\$1,950
5	Embankment, CIP	Cyd	31	\$20	\$620
6	Excavation, Earth	Cyd	55	\$30	\$1,650
7	Subgrade Undercutting, Type II	Cyd	20	\$50	\$1,000
8	Ditch Cleanout	Ft	2,200	\$8	\$17,600
9	Erosion Control, Inlet Protection, Fabric Drop	Ea	4	\$100	\$400
10	Erosion Control, Silt Fence	Ft	150	\$3	\$450
11	Check Dam Compost Filter Protection, 8 inch	Ft	520	\$3	\$1,560
12	Subbase, CIP	Cyd	14	\$50	\$700
13	Aggregate Base, 6 inch	Syd	510	\$8	\$4,080
14	HMA Base Crushing and Shaping	Syd	7,662	\$2.50	\$19,155
15	Material, Surplus and Unsuitable, Rem, LM	Cyd	60	\$30	\$1,800
16	Salv Crushed Material, LM	Cyd	120	\$30	\$3,600
17	Driveway Maintenance, Residential	Ea	47	\$100	\$4,700
18	Approach, CI I, 6 inch	Syd	60	\$15	\$900
19	Shld, CI I, 6 inch	Syd	520	\$15	\$7,800
20	Trenching	Sta	42	\$125	\$5,250
21	Culv, CI F, 12 inch	Ft	64	\$60	\$3,840
22	Sewer Tap, 4 inch	Ea	1	\$250	\$250
23	Dr Structure Cover, Adj, Case 1	Ea	7	\$500	\$3,500

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
24	Dr Structure, Tap, 4 inch	Ea	2	\$250	\$500
25	Dr Structure, Temp Lowering	Ea	7	\$100	\$700
26	Underdrain, Subbase, 4 inch	Ft	140	\$9	\$1,260
27	Pavt, Cleaning	LSUM	1	\$10,000	\$10,000
28	Cold Milling HMA Surface	Syd	3,160	\$4.30	\$13,588
29	HMA Surface, Rem	Syd	420	\$8	\$3,360
30	Hand Patching	Ton	10	\$700	\$7,000
31	HMA, 13A	Ton	1,600	\$90	\$144,000
32	HMA Approach	Ton	170	\$130	\$22,100
33	Cold Milling Conc Pavt	Syd	2,250	\$4.30	\$9,675
34	Driveway, Nonreinf Conc, 6 inch	Syd	154	\$41	\$6,314
35	Curb and Gutter, Conc, Det F4	Ft	700	\$26	\$18,200
36	Detectable Warning Surface	Ft	65	\$40	\$2,600
37	Curb Ramp Opening, Conc	Ft	91	\$26	\$2,366
38	Sidewalk, Conc, 4 inch	Sft	1,125	\$4.10	\$4,612.50
39	Sidewalk, Conc, 6 inch	Sft	325	\$5	\$1,625
40	Curb Ramp, Conc, 6 inch	Sft	650	\$6.50	\$4,225
41	Post, Mailbox	Ea	11	\$125	\$1,375
42	Barricade, Type III, High Intensity, Double Sided, Lighted, Furn	Ea	12	\$92	\$1,104
43	Barricade, Type III, High Intensity, Double Sided, Lighted, Furn	Ea	12	\$4.60	\$55.20
44	Dust Palliative, Applied	Ton	2	\$570	\$1,140
45	Minor Traf Devices	LSUM	1	\$10,000	\$10,000
46	Plastic Drum, Fluorescent, Furn	Ea	60	\$28.52	\$1,711.20
47	Plastic Drum, Fluorescent, Oper	Ea	60	\$0.92	\$55.20
48	Sign, Type B, Temp, Prismatic, Furn	Sft	400	\$4.30	\$1,720
49	Sign, Type B, Temp, Prismatic, Oper	Sft	400	\$0.05	\$20

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
50	Sign, Type B, Temp, Prismatic, Spec, Furn	Sft	60	\$4.40	\$264
51	Sign, Type B, Temp, Prismatic, Spec, Oper	Sft	60	\$0.05	\$3
52	Slope Restoration, Non-Freeway, Type A	Syd	1,920	\$7	\$13,440
53	Water Shutoff, Adj, Case 1	Ea	2	\$300	\$600
54	Gate Box, Adj, Case 1	Ea	2	\$300	\$600
55	Sanitary Structure Cover, Adj, Case 1	Ea	1	\$500	\$500
	Total Unit Price Work				\$397,866.10

PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. The retainage on payments due the Contractor shall be in accordance with applicable provisions of Michigan Act No. 524, Public Acts of 1980 and amendments thereto. The retainage shall be an amount equal to 10% of said estimate until 50% of the Work has been completed. At 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless Engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the Work completed.
- B. Upon Substantial Completion of the Work, any amount retained may be paid to the Contractor, said amount to be paid upon receipt of consent from the Contractor's surety, complete with power of attorney as required, to release retainage to the Contractor. When the Work which cannot be completed because of weather conditions, lack of materials or other reasons, which in the judgement of the Owner are valid reasons for noncompletion, the Owner may make additional payments, retaining at all times an amount sufficient to secure the completion of the Work.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of five (5) percent per annum.

ARTICLE 6—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Addenda (none issued).
 - 6. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - b. Notice of Award
 - c. Attachment A
 - 7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 7. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 8. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on July 13, 2023 (which is the Effective Date of the Contract).

Owner:
City of St. Johns
(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:
100 E State Street
St. Johns, MI 48879

Designated Representative:
Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Phone: _____

Email: _____
(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:
Michigan Paving & Materials Company
(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)
(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:
16777 Wood Street
Lansing, MI 48906

Designated Representative:
Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address: _____

Phone: _____

Email: _____

License No.: _____
(where applicable)

State: _____



MEMORANDUM CITY OF ST. JOHNS

To: City Commission
Chad A. Gamble P.E.; City Manager

From: Justin A Smith

Date: July 17, 2023

Subject: Walker Rd. BR27 MEDC Grant

At the April City Commission Meeting a proposal from C2AE was approved to facilitate the design and bidding process for the MEDC grant the city received to improve the Walker Rd BR 27 intersection. Presented for your approval is the contract to complete the project with the successful bidder Youngstron Contracting. Please note, this entire project is funded by the MEDC grant with no cost to the city.

Recommendation: Approval and signature of the mayor on the contract for the Walker Rd/ BR 27 project..

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of St. Johns ("Owner") and Youngstrom Contracting Inc. ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Planning improvements to the BR US-127 intersection at walker road in St. Johns for safety and traffic management.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Planning improvements to the BR US-127 intersection at Walker Road in St Johns for safety and traffic management.

ARTICLE 3—ENGINEER

3.01 The Owner has retained C2AE, 50 Louis St. NW, Grand Rapids, MI 49503 ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by C2AE.

ARTICLE 4—CONTRACT TIMES

4.01 *Time Is Of The Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before October 30, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 15, 2023.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. The retainage on payments due the Contractor shall be in accordance with applicable provisions of Michigan Act No. 524, Public Acts of 1980 and amendments thereto. The retainage shall be an amount equal to 10% of said estimate until 50% of the Work has been completed. At 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless Engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the Work completed.
- B. Upon Substantial Completion of the Work, any amount retained may be paid to the Contractor, said amount to be paid upon receipt of consent from the Contractor's surety, complete with power of attorney as required, to release retainage to the Contractor. When the Work which cannot be completed because of weather conditions, lack of materials or other reasons, which in the judgement of the Owner are valid reasons for noncompletion, the Owner may make additional payments, retaining at all times an amount sufficient to secure the completion of the Work.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of five (5) percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 1. This Agreement.
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 3. General Conditions.
 4. Supplementary Conditions.
 5. Drawings (not attached but incorporated by reference) consisting of nine sheets with each sheet bearing the following general title: Walker Road/US-127 BR Intersection Improvements.
 6. *Addenda (none included)*.
 7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - b. Notice of Award
 - c. Attachment A
 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
8. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on July 17, 2023 (which is the Effective Date of the Contract).

Owner:

City of St. Johns

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

100 E. State St.

St. Johns, MI 48879

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

Youngstrom Contracting Inc.

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

519 Sprague Rd

Ionia, MI 48846

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:



MEMORANDUM
CITY OF ST. JOHNS
Department of Public Services

To: Chad Gamble, City Manager
Justin Smith, Director of Public Services

From: Jeremy Ritter, Department of Public Works Supervisor

Date: July 12, 2023

Subject: Dump trailer

The Department of Public Works has obtained quotes for a 14' Dump trailer. This trailer will be in addition to the current dump trailer already in service assisting Public Works Crews.

Trailer quotes were requested from Dynamic Trailer Direct (\$13,147), USA Trailer (\$11,500), and US 27 Motorsports & Trailer (\$12,199)

Dynamic Trailer Direct	\$13,147
USA Trailer	\$11,500
US 27 Motorsports& Trailer	\$12,199

The quoted trailers from USA and Dynamic trailers are a scissor lift style while the trailer quoted from US 27 Motorsports is a single cylinder style. Although not the lowest bid, Public Works staff has found the single cylinder type dump trailer to be reliable and far superior with respect to lifting/dumping capacity. This results in the safety of the employees.

Recommendation: Approval of the purchase of the dump trailer from US 27 Motorsports. The trailer was budgeted for and funds available in budget line 515-528-989.006

U.S.27 MOTORSPORTS & TRAILERS

5301 N. U.S. 27 HWY
ST. JOHNS MI 48879
989-224-8874

CITY OF ST JOHNS

Buyer's Order

Date 07/13/2023

100 EAST STATE STREET SUITE 1100
ST JOHNS, MI 48879

Deal No.
Salesperson LARRY LONG
Lienholder NONE

H 989-224-8944 W 517-490-8356 C 989-224-8944 Email JRITTER@STJOHNSMICH.COM

I hereby agree to purchase the following unit(s) from you under the terms and conditions specified. Delivery is to be made as soon as possible. It is agreed, however, that neither you nor the manufacturer will be liable for failure to make delivery.

Unit Information

New/U	Year	Make	Model	Serial No.	Stock No.	Price (Incl factory options)
New	2023	SURE-TRAC	82X14 HD LP DUMP	5JW1D1425P4392514	NC66	\$12,199.00

Options:

Dealer Unit Price	\$12,199.00
Factory Options	\$0.00
Added Accessories	\$0.00
Freight	\$0.00
Dealer Prep	\$0.00

Notes:

Cash Price	\$12,199.00
Trade Allowance	\$0.00
Payoff	\$0.00
<hr/>	
Net Trade	\$0.00
Net Sale (Cash Price - Net Trade)	\$12,199.00
Sales Tax	\$731.94
Title/License/Registration Fees	\$0.00
Document or Administration Fees	\$0.00
Credit Life Insurance	\$0.00
Accident & Disability	\$0.00
<hr/>	
Sub Total (Net Sale + Other Charges)	\$12,930.94
Cash Down Payment	\$0.00
Amount to Pay/Finance	\$12,930.94

Trade Information

Monthly Payment of \$275.81 For 60 Months at 9.99% Interest

NOTICE TO BUYER: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

TRADE-IN NOTICE: Customer represents that all trade in units described above are free of all liens and encumbrances except as noted.

*With Approved Credit. Interest rates and monthly payment are approximate and may vary from those determined by the lender.

Customer Signature _____ Dealer Signature _____

Thank You for Your Business!



AGENDA

CITY COMMISSION BOARD/COMMITTEE ASSIGNMENTS

- | | | |
|-----|---------------------------------------------------------------|--------------------|
| 1. | Zoning Board of Appeals | Scott |
| 2. | Planning Commission | Scott/Vacant |
| 3. | Parks and Rec | Vacant |
| 4. | Parking Committee | Scott |
| 5. | Exterior Property Maintenance Ordinance Citizens Review Panel | Brad |
| 6. | Property Review Advisory | Scott/Jean |
| 7. | City of St Johns/Bingham Twp | Scott/Eric |
| 8. | Fire Advisory | Jean/Eric |
| 9. | Finance Advisory | Vacant/Brad |
| 10. | Personnel Advisory | Scott/Eric |
| 11. | School Advisory | Vacant/Eric |
| 12. | Law Enforcement Advisory Group | Eric/Brad |
| 13. | Clinton Area Ambulance | Brad/ Scott as Alt |
| 14. | Midwest Trail Authority | Jean |
| 15. | Board of Ethics | Scott* |
| 16. | LDFA | Eric * |

*These boards do not require a commissioner as a member on that board.



MEMORANDUM CITY OF ST. JOHNS

To: City Commission
Chad A. Gamble P.E.; City Manager

From: Justin Smith; Director of Public Services

Date: July 18, 2023

Subject: Construction Equipment Lease

In September, our second successful 5-year construction equipment lease with Michigan CAT will expire. As we started to explore our options for the lease end, our fears were validated. Due to increased inflation and a global shortage of construction equipment the cost of a new lease has nearly doubled. Leasing our construction equipment has become an invaluable asset to our Utility Divisions allowing operators to have low hour, safe and reliable equipment to successfully maintain our utilities. This led our sales associate from Michigan CAT and I to think outside the box for a solution.

One of the advantages with the CAT lease is a “guaranteed buyback” program. This is a set number at the beginning of the lease that guarantees the price CAT will pay for the machine at the end of the lease or it allows us to purchase the respective machine at said price. Given the intense inflation of construction equipment pricing the city stands to benefit greatly by utilizing the “guaranteed buyback” program and purchasing the construction equipment for the price set in 2018 when the lease was initiated. In anticipation of this purchase funds were budgeted for in the Water and Sewer fund for 23/24 and the equipment will be financed through CAT financial.

By purchasing the equipment from the lease, the city will gain approximately \$40,000 per piece of equipment in equity. Our ultimate goal is to utilize that equity by trading in the purchased machines on a new 5-year lease within the next 12-24 months as the market allows.

Recommendation: Approval to begin process of purchasing leased construction equipment from Michigan CAT. A purchase agreement reviewed by our attorneys will then be presented for approval at the August meeting.

RESOLUTION #19-2023
RESOLUTION TO INTRODUCE AN ORDINANCE TO REPEAL AND REPLACE
CHAPTER 54 OF TITLE V OF THE CODE OF ORDINANCES TO
PROVIDE FOR INDUSTRIAL PRETREATMENT REGULATIONS

At a regular meeting of the City Commission of the City of St. Johns, Clinton County, Michigan, held at the City Hall, in said City on the ____ day of _____, 2023 at _____ p.m., Local Time.

Present: _____

Absent: _____

The following resolution was offered by _____ and supported by _____.

WHEREAS, the City of St. Johns (“City”) has previously adopted an ordinance regulating industrial pretreatment; and

WHEREAS, the City now desires to repeal and replace in its entirety Chapter 54 of Title V, (entitled *Industrial Pretreatment*) of the Code of Ordinances of the City of St. Johns, to provide for revised and updated industrial pretreatment regulations; and

WHEREAS pursuant to the “Ordinances” chapter of the City of St. Johns Charter (“Charter”), the City has the authority to amend its Code of Ordinances; and

WHEREAS, pursuant to Section 5 of the “Ordinance” chapter of the Charter, the City must first introduce an ordinance before it is adopted; and

WHEREAS, the City desires to introduce an ordinance to repeal and replace in its entirety Chapter 54 of Title V of the Code of Ordinances.

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of St. Johns as follows:

1. The City introduces Ordinance No. 2023-677, An Ordinance To Repeal And Replace Chapter 54 Of Title V Of The Code Of Ordinances To Provide For Industrial Pretreatment Regulations, attached hereto as Exhibit A.
2. Ordinance No. 2023-677 will be considered for adoption by the City Commission on _____.

**CITY OF ST. JOHNS
ORDINANCE NO. 677**

**AN ORDINANCE TO AN ORDINANCE TO REPEAL AND REPLACE
CHAPTER 54 OF TITLE V OF THE CODE OF ORDINANCES TO
PROVIDE FOR INDUSTRIAL PRETREATMENT REGULATIONS**

THE CITY OF ST. JOHNS ORDAINS:

Section 1. Purpose. It is the purpose of this Ordinance to amend the City's Code of Ordinances to repeal and replace Chapter 54 of Title V to provide for revised and updated industrial pretreatment regulations.

Section 2. Amendment to Chapter 54. Chapter 54 of Title V, (entitled *Industrial Pretreatment*) of the Code of Ordinances of the City of St. Johns, is repealed and replaced in its entirety and shall now read as follows:

CHAPTER 54: INDUSTRIAL PRETREATMENT

Section

General Provisions

- 54.01 Purpose and policy
- 54.02 Definitions
- 54.03 Abbreviations

Fees

- 54.20 Purpose
- 54.21 Charges and fees

- 54.22 Identify and locate industrial users
- 54.23 Identify characteristics and volume of pollutants
- 54.24 Surcharges

Regulations

- 54.35 General discharge prohibitions
- 54.36 National categorical pretreatment standards
- 54.37 Modification of national categorical pretreatment standards
- 54.38 Specific pollutant limitations
- 54.39 State requirements
- 54.40 City's right of revision
- 54.41 Dilution prohibited as substitute for treatment
- 54.42 Accidental discharges
- 54.43 Mercury reduction plan (MRP)

Administration

- 54.55 Wastewater discharges
- 54.56 Wastewater discharge permits
- 54.57 Contributing municipality
- 54.58 Reporting requirements for permittee
- 54.59 Monitoring facilities
- 54.60 Inspection and sampling
- 54.61 Receive and analyze self-monitoring reports
- 54.62 Investigation of instances of noncompliance

- 54.63 Notice of violation/repeat sampling and reporting
- 54.64 Pretreatment
- 54.65 Confidential information
- 54.66 Record keeping requirements

Enforcement

- 54.75 Harmful contributions
- 54.76 Revocation of permit
- 54.77 Notification of violation
- 54.78 Show cause hearing
- 54.79 Consent orders
- 54.80 Compliance orders
- 54.81 Cease and desist orders
- 54.82 Judicial proceedings
- 54.83 Right of appeal
- 54.84 Affirmative defenses
- 54.85 Bypass
- 54.86 Operating upsets
- 54.87 Net/gross calculation
- 54.88 Recovery of costs incurred by the city
- 54.99 Penalty
- 54.100 Severability

Appendix 1 Standard Ordinance Limits and Surcharges for Discharges of Certain Pollutants

Appendix 2 MAIL Limits

GENERAL PROVISIONS

§ 54.01 PURPOSE AND POLICY.

(A) This chapter sets forth requirements for contributors into the wastewater collection and treatment systems for the city and enables the city to comply with all applicable state and federal laws required by the Clean Water Act of 1977, 33 USC 1251, et seq.; the General Pretreatment Regulations (40 C.F.R. Part 403); Part 31 of Act 451 of Public Acts of Michigan of 1994, MCL §§324.3101 et seq., as amended (“Water Resources Protection”); and the rules, Michigan Administrative Code, R 323.2301 et seq., as amended, promulgated pursuant to Sections 3103, 3106 and 3109 of Part 31 of Act 451 of the Public Acts of Michigan of 1994, as amended.

(B) The objectives of this chapter are:

- (1) To prevent the introduction of pollutants into the city wastewater system which will interfere with the normal operation of the system, cause pass through, or contaminate the resulting municipal sludge;
- (2) To prevent the introduction of pollutants into the city wastewater system which do not receive adequate treatment in the POTW and which will pass through the system into receiving waters or the atmosphere or otherwise be incompatible with the system; and

(3) To improve the opportunity to recycle and reclaim wastewater and sludge from the system.

(C) This chapter provides for the regulation of contributors to the city wastewater system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customers’ capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(D) This chapter shall apply to the city and to persons outside the city who are, by contract or agreement with the city, users of the city POTW. This chapter is a supplement to Chapters 51 and 53, as amended. Except as otherwise provided herein, the Supervisor, or its duly authorized representative, shall administer, implement, and enforce the provisions of this chapter.

§ 54.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT or **THE ACT**. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

ACCIDENTAL DISCHARGE. The accidental discharge of toxic substances or prohibited pollutants in amounts which the city determines may interfere with the operation of the POTW.

AFFIRMATIVE DEFENSE. *In the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.*

APPROVAL AUTHORITY. The Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) or its successor state department, or the United States Environmental Protection Agency.

AUTHORIZED REPRESENTATIVE OF INDUSTRIAL USER. An authorized representative of an industrial user may be:

- (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation, if the industrial user is a corporation;

- (2) A general partner or sole proprietor if the industrial user is a partnership or sole proprietorship, respectively;
- (3) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales for expenditures exceeding \$25,000,000.00, in second-quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (4) The individuals described in 1 through 3 above may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

BIOCHEMICAL OXYGEN DEMAND (BOD). The quality of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20°C expressed in terms of weight and concentration (milligrams per liter (mg/l)).

BUILDING SEWER. A sewer conveying wastewater from the premises of a user to the POTW.

CATEGORICAL INDUSTRIAL USER. An industrial user subject to a categorical pretreatment standard or categorical Standard.

CITY. The City of St. Johns or the City Commission of St. Johns.

COMBINED WASTESTREAM FORMULA. A formula applied where regulated, unregulated and/or dilution wastestreams are combined/mixed prior to pretreatment.

COMMERCIAL USER. All nondomestic sources of discharge other than industrial users, as defined herein, including, but not limited to the following: a publicly or privately owned facility where persons are engaged in the exchange or sale of goods or services, hospitals, retail establishments, schools and facilities operated by local and state governments.

COOLING WATER. The water discharged from any use, such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.

CONTROL AUTHORITY. The City of St. Johns or the Supervisor, as defined herein.

DAILY MAXIMUM. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

DAILY MAXIMUM LIMIT. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

DOMESTIC SOURCE. A source whose waste normally emanates from residential living units and results from the day-to-day activities usually considered to be carried on in a domicile.

EGL. The Michigan Department of Environment, Great Lakes and Energy.

ENVIRONMENTAL PROTECTION AGENCY or EPA. The U.S. Environmental Protection Agency.

GRAB SAMPLE. A single sample collected at a particular time and place which represents the composition of the waste stream only at that time and place.

HOLDING TANK WASTE. Any waste from holding tanks, such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

INDUSTRIAL USER. A source of discharge under regulations issued pursuant to § 402 of the Act (33 U.S.C. § 1342), which source originates from, but is not limited to, facilities engaged in industry, manufacturing,

business, trade or research, including the development, recovery or processing of natural resources.

INDUSTRIAL WASTE. Any liquid, solid or gaseous waste form of energy or combination thereof resulting from any process of industry, manufacturing, business, trade or research, including the development, recovery or processing of natural resources.

INDUSTRIAL WASTE SURVEY. A survey of all companies that discharge to the POTW. The survey identifies the magnitude of the wastewater flows and pollutants in accordance with 40 C.F.R. § 403.8.(f)(2).

INTERFERENCE. The inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the city's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with § 405 of the Act (33 U.S.C. § 1345), or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria applicable to the method of disposal or use employed by the POTW.

LOCAL LIMIT. Specific discharge limits developed and enforced by the city upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 C.F.R. 403.5(a)(1) and (b).

MONTHLY AVERAGE. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

MONTHLY AVERAGE LIMIT. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

NATIONAL CATEGORICAL PRETREATMENT STANDARD or **PRETREATMENT STANDARD.** Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of industrial user.

NATIONAL PROHIBITIVE DISCHARGE STANDARD or **PROHIBITIVE DISCHARGE STANDARD.** Any regulation developed under the authority of § 307(b) of the Act (33 U.S.C. 1317) and 40 C.F.R. § 403.5.

NEW SOURCE.

(1) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section, provided that:

- (a) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- (b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsections (1)(b) or (1)(c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this definition has commenced if the owner or operator has:

- (a) Begun or caused to begin as part of a continuous onsite construction program:
 - 1. Any placement, assembly, or installation of facilities or equipment; or

2. Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM or NPDES PERMIT. A permit issued pursuant to § 402 of the Act (33 U.S.C. § 1342).

PASS THROUGH. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit, including an increase in the magnitude or duration of a violation.

PERSON. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

POLLUTION. The impairment (reduction) of water quality by agricultural, domestic, or industrial wastes (including thermal and radioactive wastes) to a degree that the natural water quality is changed to hinder any beneficial use of the water.

POLLUTANT. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. Pollutant does not mean (1) sewage from vessels or (2), water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well, used either to facilitate production or for disposal purposes, is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in degradation of ground or surface water.

PRETREATMENT or TREATMENT. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by 40 C.F.R. § 403.6(d).

PRETREATMENT REQUIREMENTS. Any substantive or procedural requirements related to pretreatment, other than a national pretreatment standard imposed on a user.

PRETREATMENT STANDARDS or STANDARDS. Prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

PROHIBITED DISCHARGE STANDARDS or PROHIBITED DISCHARGE. Absolute prohibitions against the discharge of certain substances.

PUBLICLY OWNED TREATMENT WORKS (POTW). A treatment works as defined by § 212 of the Act (33 U.S.C. § 1292). This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this chapter, *POTW* shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the POTW.

POTW TREATMENT PLANT. That portion of the POTW designed to provide treatment to wastewater.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA). Dated October 21, 1976, Pub. L. No. 94-580 (42 U.S.C. §§ 6901 *et seq.*) provides technical and financial assistance for the development of plans and facilities for recovery of energy and resources from discarded materials and for the safe disposal of discarded materials and hazardous waste.

SIGNIFICANT NONCOMPLIANCE.

Significant Noncompliance means one or more of the following by any significant industrial user:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric pretreatment standard or requirement, as defined or referred to in §54.38;

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric pretreatment standard or requirement, as defined or referred to in §54.38 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment standard or requirement as defined or referred to in §54.38 (e.g. Daily Maximum, long-term average or narrative standard) that the Supervisor determines has caused, alone or in combination with, other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

(4) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Supervisor's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or local permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation(s), which may include a violation of Best Management Practices, which the Supervisor determines will adversely affect the operation or implementation of the local pretreatment program.

SIGNIFICANT INDUSTRIAL USER.

(1) Except as provided in division (2) of this definition:

(a) All industrial users subject to categorical pretreatment standards under the Code of Federal Regulations, 40 C.F.R. 403.6 and 40 C.F.R. chapter I, subchapter N; or

(b) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 C.F.R. 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in division (1)(b) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 C.F.R. 403.8(f)(6), determine that such industrial

user is not a significant industrial user.

SPECIAL ALTERNATIVE LIMIT (SAL). User-specific maximum limits may be set for specific pollutants, SALs are developed in accordance with the POTW's Industrial Pretreatment Program and § [54.38\(D\)](#) of this ordinance.

STANDARD INDUSTRIAL CLASSIFICATION (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the executive office of the President, Office of Management and Budget, 1972.

STORM SEWER. A separate pipe, conduit or open channel (sewer) that carries runoff from storms, surface drainage, and street wash, but does not include industrial or domestic wastes.

STORMWATER. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

SUSPENDED SOLIDS. The total suspended matter that floats on the surface of or is suspended in water, wastewater or other liquids and which is removable by laboratory filtering.

SUPERVISOR. The person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this chapter, or his duly authorized representative.

SURCHARGE. Surcharge means the additional charges made by the city for the treatment of wastewater containing pollutants in excess of specified concentrations, loadings or other applicable limits, or for other purposes specified in the ordinance.

TOXIC POLLUTANT. Those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

USER. Any person who contributes, causes or permits the contribution of wastewater into city's POTW.

UPSET. An exceptional incident in which there is unintentional and temporary noncompliance with standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

WASTEWATER. The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

WATERS OF THE STATE. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

§ 54.03 ABBREVIATIONS.

The following abbreviations shall have the designated meanings.

BOD	Biochemical oxygen demand
C.F.R.	Code of Federal Regulations
COD	Chemical oxygen demand
EPA	Environmental Protection Agency
l	Liter
mg	Milligrams

mg/l	Milligrams per liter
NPDES	National pollutant discharge elimination system
POTW	Publicly owned treatment works
RCRA	Resource Conservation and Recovery Act SIC Standard industrial classification
SWDA	Solid Waste Disposal Act, 42 U.S.C. §§ 6901 <i>et seq.</i>
U.S.C.	United States Code
TSS	Total suspended solids

FEES

§ 54.20 PURPOSE.

It is the purpose of this subchapter to provide for the recovery of costs from users of the city's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth within the city's schedule of charges and fees.

§ 54.21 CHARGES AND FEES.

(A) The city may adopt charges and fees which may include:

- (1) Fees for reimbursement of costs of setting up and operating the city's pretreatment program;
- (2) Fees for monitoring, inspections and surveillance procedures, including the costs of collection and analyzing a user's discharge, and reviewing monitoring reports and certification statements submitted by users;
- (3) Fees for reviewing accidental discharge procedures and construction;
- (4) Fees for filing appeals;
- (5) Fees for development, administration and permit applications including the cost of processing such applications;
- (6) Fees to recover administrative and legal costs (not included in subsection A(2)) associated with the enforcement activity taken by the Supervisor to address user noncompliance;
- (7) Surcharges as set forth in § 54.24; and
- (8) Other fees as the city may deem necessary to carry out the requirements contained herein.

(B) These fees relate solely to the matters covered by this ordinance and are separate from all other fees chargeable by the city.

§ 54.22 IDENTIFY AND LOCATE INDUSTRIAL USERS.

The city shall under the direction of the Supervisor identify and locate all possible industrial users which might be subject to the city's pretreatment program as is stated in 40 C.F.R. § 403.8.F.2(i).

§ 54.23 IDENTIFY CHARACTERISTICS AND VOLUME OF POLLUTANTS.

The city shall under the direction of the Supervisor identify the character and volume of pollutants contributed to the POTW by the industrial users identified in 40 C.F.R. § 403.8.(f)(2)(i) as is stated in 40 C.F.R. § 403.8.(f)(2)(ii). The city shall under the direction of the Supervisor require users to periodically update the city with the character and volume of pollutants contributed to the POTW.

§ 54.24 SURCHARGES.

(A) Surcharges are intended to reimburse the city for all costs incurred by the POTW in handling or treating a discharge that contains pollutants in excess of specified surcharge concentrations, loadings or other applicable limits. These costs may include, but are not limited to, the actual cost of treatment including chemical, equipment, and personnel costs.

(B) Any user exceeding applicable surcharge limitations or other applicable limits shall be subject to the imposition of one or more surcharges as provided by this section to reimburse the POTW for any costs or expenses, direct or indirect, the POTW may incur in handling or treating the discharge, or which may be imposed upon the city, where the exceedance of applicable limits causes or contributes to those costs or expenses.

(C) The city may establish surcharge thresholds and rates for BOD, TSS, phosphorous, ammonia nitrogen and any other pollutant parameter for which a surcharge determined appropriate by the Supervisor. These thresholds and rates shall be established, reviewed, calculated, and/or determined from time to time, as determined appropriate by the city.

(D) All violations of applicable discharge prohibitions and limitations and all instances of noncompliance with applicable discharge requirements shall constitute a violation of this ordinance, subject to applicable fines, penalties and other enforcement actions provided by this ordinance. In no event shall the imposition of a surcharge for a discharge that does not meet the applicable prohibitions, limitations or requirements be construed as authorizing the illegal discharge or otherwise excuse a violation of this ordinance.

REGULATIONS

§ 54.35 GENERAL DISCHARGE PROHIBITIONS.

(A) No user shall contribute or cause to be contributed any pollutant or wastewater which will interfere with the operation or performance of the POTW or cause pass through. These general prohibitions apply to all such users of the POTW whether or not the user is subject to other national pretreatment standards or any national, state, or local pretreatment requirements. A user may not contribute the following substances to the POTW:

- (1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW, including but not limited to wastestreams with a closed cup flashpoint of less than 140° F or 60° C using test methods specified in 40 C.F.R. § 261.21. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or any point in the system), be more than 5% nor any single reading over 10% of the lower explosive limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city, the state or EPA has notified the user is a fire hazard or a hazard to the system.
- (2) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to, grease, garbage with particles greater than one-half inch in any dimensions, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass,

straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

- (3) Any wastewater having a pH less than 6.0 or greater than 9.5, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.
- (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to § 307(a) of the Act.
- (5) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (6) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under § 405 of the Act, any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.
- (7) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- (8) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in quantity that may cause acute worker health and safety problems.
- (9) Trucked or hauled pollutants, except at discharge points designated by the Supervisor.
- (10) Any substance which will cause the POTW to violate its NPDES and/or state permit or the receiving water quality standards.
- (11) Any wastewater with objectionable color not removed in the treatment process, such as but not limited to dye wastes and vegetable tanning solutions.
- (12) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 40°C (104°F).
- (13) Any pollutants, including oxygen demanding pollutants (BOD and the like), released at a flow rate and/or pollutant concentration which a user knows or has reason to know will cause interference to the POTW. In no case shall a slug load have a flow rate or contain a concentration of quantities of pollutants that exceed for any time period longer than 15 minutes more than five times the average 24 hour concentration, quantities, or flow during normal operation. In no case shall a flow be released which restricts the hydraulic capacity of sewer structures.
- (14) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Supervisor in compliance with applicable state or federal regulations.
- (15) Any wastewater which causes a hazard to human life or creates a public nuisance.

(B) When the Supervisor determines that a user is contributing to the POTW any of the above enumerated substances in such amounts as to interfere with the operation of the POTW or cause pass through, the Supervisor shall:

- (1) Advise the user of the impact of the contribution on the POTW; and
- (2) Develop effluent limitations for such user to correct the interference with the POTW and/or pass through.

§ 54.36 NATIONAL CATEGORICAL PRETREATMENT STANDARDS.

(A) Deadline for compliance with categorical standards by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 C.F.R. Chapter (I), subchapter (N), Parts 405-471. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to § 301(i)(2) of the Act, being 33 U.S.C. § 1311, shall be required to meet compliance dates set in any applicable categorical pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of a new source as defined in 40 C.F.R. § 403.3(k). New sources shall install and have in operating condition and shall “start-up” all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

(B) Upon the promulgation of the national categorical pretreatment standards for a particular industrial subcategory, the national standard, if more stringent than limitations imposed under this chapter for sources in the subcategory, shall immediately supersede the limitations imposed under this chapter. The Supervisor shall notify all affected users of the applicable pretreatment standards.

(C) When wastewater subject to a national categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Supervisor shall impose an alternate limit using the combined wastestream formula in 40 C.F.R. § 403.6(e).

§ 54.37 MODIFICATION OF NATIONAL CATEGORICAL PRETREATMENT STANDARDS.

The city may apply to the approval authority for modification of specific limits in the national pretreatment standards, as set forth in § 403.7 of 40 C.F.R. Part 403 “General Pretreatment Regulations for Existing and New Sources of Pollution” promulgated pursuant to the Act. The city may then modify pollutant discharge limits in the national pretreatment standards if the requirements contained in 40 C.F.R. § 403.7 are fulfilled and prior approval from the approval authority is obtained.

§ 54.38 SPECIFIC POLLUTANT LIMITATIONS.

(A) *Limitations for selected materials.* Users who fall into categories for which national categorical pretreatment standards have been established shall comply with these standards. More stringent standards may be applied by the city where necessary to achieve the goals of the city’s pretreatment program.

(B) *Concentration and mass limits.*

- (1) Pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, state, or national authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard or as otherwise specified by the standard.
- (2) When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purpose of calculating effluent limitations applicable to individual industrial users.

- (3) The control authority calculating equivalent mass-per-day limitations under subsection (B)(2) of this section shall calculate such limitations by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial users actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.
- (4) The control authority calculating equivalent concentration limitations under subsection (B)(2) of this section shall calculate such limitations by dividing the mass limitations derived under subsection (B)(3) of this section by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the representative year.
- (5) Equivalent limitations calculated in accordance with this section shall be deemed pretreatment standards for the purposes of § 307(d) of the Act and this part. Industrial user's will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived. The control authority must document how the equivalent limits were derived and make this information publicly available.
- (6) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average or four day average limitations. Where such standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.
- (7) Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

(C) *Limitations for compatible pollutants and other constituents.* Standard Ordinance Limits for Discharge of compatible pollutants and other constituents are set forth and incorporated hereto in Appendix 1; and, MAIL Limits for compatible pollutants and other constituents are set forth and incorporated hereto in Appendix 2.

(D) *Special Alternative Limits (SALs).* For any discharge that would otherwise be prohibited by this section of this ordinance, above, the city POTW may impose one or more SALs for all or any portion of the discharge (or for all or any pollutant parameter thereof) pursuant to a User Permit or by POTW order. Each SAL must be approved in advance by the city Supervisor. The following conditions and requirements shall apply to all SALs:

- (1) The city POTW shall not be required to approve or require a SAL, but may do so at its sole discretion. The city may terminate or modify the SAL, and/or require compliance with different or additional discharge standards or requirements as determined necessary or appropriate at any time.
- (2) A SAL shall not create any property rights or privilege of any kind whatsoever, nor shall it be construed to authorize any injury to private or public property or any invasion of personal rights, nor any violation of local, state or federal laws or regulations.
- (3) A SAL may include any terms, conditions or requirements determined necessary and appropriate by the Supervisor, including, but not limited to, terms, conditions and requirements regarding sampling, analysis, fees, reimbursement, surety, indemnification, and insurance.

- (4) The Supervisor shall establish each SAL based on an allocation of the amount of remaining available loadings from the city POTW's Maximum Allowable Industrial Loading (MAIL) for a given pollutant at the time when the SAL is approved and assigned. Each SAL may also be subject to a maximum (not-to-exceed) concentration as determined necessary by the city POTW to protect the receiving sewer, the city POTW, public health and safety, the environment, or to otherwise achieve the purposes, objectives, and requirements of this ordinance. The MAILs for pollutants of concern are set forth in Appendix 2. All SAL allocations shall be in the amounts, and subject to the terms, conditions, and requirements, as deemed necessary and appropriate by the Supervisor.
- (5) Violation of any SAL (or of any of the terms, conditions or requirements of a SAL) shall be a violation of this ordinance and subject to applicable fines, penalties, and other enforcement actions.
- (6) The total mass of a pollutant of concern allocated to trucked wastes and all other nondomestic users (specifically excluding domestic/background sewage, septage wastes, and all other domestic users) shall not exceed the MAILs as set forth in Appendix 2 in the aggregate when taking into account all SALs that have been assigned by the Supervisor and considered to be active at the time.
- (7) SALs shall not exceed national standards applicable to categorical industries, nor any other local, state, or national standards and requirements.
- (8) The following constituents are not eligible for a SAL: FOG Nonpolar, FOG Total, Mercury, Cis-1,2-Dichloroethylene, Trans - 1,2-Dichloroethylene, Trichloroethylene, Cyanide Available and Vinyl Chloride.
- (9) Local Initiative Limits. The Supervisor may, in a wastewater discharge permit or an order, impose a local initiative limit ("LIL") for any pollutant not specifically regulated in § 54.38. In determining a LIL (concentration or mass), the Supervisor shall consider the acceptable discharge level of the pollutant based on current influent loading, treatment plant design, treatability, potential for pass through or interference, potential for fire/explosion or fume toxicity, potential for adverse impact to the collection system, and other factors deemed relevant by the Supervisor. A LIL shall be subject to EGLE, or its successor state department, review and approval before implementation.

§ 54.39 STATE REQUIREMENTS.

State requirements and limitations on discharges shall apply in any case where they are more stringent than national requirements and limitation or those in this chapter.

§ 54.40 CITY'S RIGHT OF REVISION.

The city reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in § 54.01. Individual permits may specify more stringent requirements or limitations than those set forth in this chapter when, in the opinion of the Supervisor, such requirements or limitations are necessary to prevent pass through or interference with the operation or performance of the POTW.

§ 54.41 DILUTION PROHIBITED AS SUBSTITUTE FOR TREATMENT.

Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement or in any other pollutant specific limitation developed by the city or state. The control authority (as defined in 40 C.F.R. § 403.12(a)) may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations is appropriate.

§ 54.42 ACCIDENTAL DISCHARGES.

(A) Significant industrial users and all industrial/commercial users with the potential to discharge toxic substances or prohibited pollutants in amounts which the city determines may cause pass through or interfere with the operation of the POTW shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Upon request by the city, detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the city for review. Review of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter.

(B) In case of all discharges that could cause pass through or problems to the POTW, including slug loadings, it is the responsibility of all categorical and noncategorical industrial users to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(C) Within five (5) days following an accidental discharge, unless waived by the Supervisor, the user shall submit to the Supervisor a detailed report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of pass through or damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

(D) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or discover such a discharge are advised of the emergency notification procedure.

(E) Significant industrial users are required to notify the Supervisor immediately of any changes at its facility affecting the potential for a slug discharge.

(F) The Supervisor shall evaluate whether each significant industrial user needs an accidental discharge/slug discharge control plan or other action to control slug discharges. The Supervisor may require any user to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. Alternatively, the Supervisor may develop such a plan for any user. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the Supervisor of any accidental or Slug Discharge; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

§ 54.43 MERCURY REDUCTION PLAN (MRP).

(A) The local discharge limitation for mercury discharged into the city sewage treatment plant (STP) is established at the level of detection (LOD) as set out in § 54.38(D) of Chapter 54 of this ordinance. Mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring shall be in accordance with EPA Methods 245.1 and 1631. The LOD, developed in accordance with the procedure specified in 40 C.F.R. 136 shall not exceed 0.2 ug/L for mercury, unless higher levels are appropriate due to matrix interference(s).

(B) The evaluation of potential matrix interference(s) shall include, at a minimum, the following:

- (1) A demonstration that the laboratory conducting the analysis is capable of achieving the

LOD of 0.2 ug/L in reagent water;

- (2) A demonstration that the LOD of 0.2 ug/L cannot be achieved in the effluent; and
- (3) A demonstration that an attempt has been made to resolve the matrix interferences.

(C) In cases where true matrix interference can be demonstrated, a discharge-specific LOD will be developed in accordance with the procedure in 40 C.F.R. 136. Discharge-specific LODs will be incorporated into the wastewater discharge permit of the nondomestic user.

(D) *Mercury reduction plan.* To ensure that the maximum allowable mercury loading to the sewage treatment plant (STP) is not exceeded, the city may require any nondomestic user with a reasonable potential to discharge mercury to develop, submit for approval and implement a mercury reduction plan (MRP). The MRP may be required by permit even if the nondomestic user has not violated the local limit for mercury, but the city has determined that a reasonable potential for such a violation may exist. An MRP may be required in notices of violations, orders or other enforcement actions when the non-domestic user has violated the mercury local limit. At a minimum, an approved MRP shall contain the following:

- (1) A written commitment by the user to reduce all nondomestic discharges of mercury to levels below the established Level of Detection (LOD) (0.2 ug/L) within three years of the MRP's original approval date;
- (2) Within sixty (60) days of notification by the city that a MRP is required, the user shall supply an initial identification of all potential sources of mercury which could be discharged to the sanitary sewer system;
- (3) Specific strategies for mercury reduction with reasonable timeframes for implementation, capable of ensuring that mercury discharges will be below the specified LOD within three years;
- (4) A program for quarterly sampling and analysis of the nondomestic discharge for mercury in accordance with EPA Methods 245.1 and 1631;
- (5) A demonstration of specific, measurable and/or otherwise quantifiable mercury reductions consistent with the goal of reducing mercury discharges below the specified LOD. Where such reductions cannot be demonstrated through normal effluent monitoring (e.g., mercury discharges are already near LOD) the demonstration should incorporate the following:
 - (a) Internal process monitoring, documenting the results of mercury reduction strategies at sampling locations within the facility (e.g., a program of regular monitoring of sink traps where mercury containing reagents had previously been disposed, but have since been substituted by non-mercury containing compounds);
 - (b) Internal and/or effluent sampling utilizing clean sampling and analytical methods as referenced by EPA Federal Register. Note that the results of such monitoring will not be used for compliance purposes unless performed in accordance with EPA Method 245.1 and collected at the appropriate compliance measurement location;
 - (c) Loading calculations wherein the nondomestic user calculates the total mass of mercury reduced from the sanitary sewer discharge through reagent substitutions, changes in disposal practices and/or other approved MRP strategies implemented.
- (6) A semi-annual report on the status of the mercury reduction efforts. At a minimum, these reports shall:
 - (a) Identify compliance or noncompliance with specific reduction commitments in the MRP;
 - (b) Summarize the analytical, mass-based or other quantifiable demonstrations of

- mercury reductions performed to date;
 - (c) Provide all applicable analytical data;
 - (d) Provide an evaluation of the effectiveness of actions taken to date;
 - (e) Provide updates to the initial list of mercury containing compounds discharged to the sanitary sewer; and
 - (f) Propose for approval new strategies and/or modifications to the current MRP to continue and improve mercury reduction efforts.
- (7) Any other conditions that the city deems necessary to ensure that mercury reduction efforts are effective in achieving the goals of this section.

(E) Failure to submit an approved MRP within thirty (30) days of the required due date shall constitute significant non-compliance in accordance with this section and will result in publication as a significant violator.

(F) A MRP may be evaluated for adequacy at any time by the city. If such an evaluation determines that the MRP is inadequate, or the nondomestic user has not complied with its approved MRP, the nondomestic user will be notified. Failure to comply with the MRP requirement constitutes non-compliance. The city will follow its Enforcement Response Plan (ERP), as found in § 53.80 *et seq.*, to ensure that corrective actions are taken and the public protected.

(G) The city reserves the right to take appropriate enforcement action against any nondomestic user that violates its discharge permit in any way, to include the discharge of mercury into the city system, even if such user has an MRP in place and is making progress toward full compliance.

(H) A nondomestic user may request a release from the MRP requirements if:

- (1) All samples of the discharge for a period of one year are less than the specified LOD;
- (2) The nondomestic user has complied with at a minimum the monitoring frequency of quarterly sampling events; and
- (3) The city deems the MRP commitments have been fulfilled sufficiently to ensure continued compliance with the mercury limitation. The city shall notify the nondomestic user of any release from MRP requirements in writing.

(I) If the MRP requirement is waived by the city, the nondomestic user remains subject to the local limitation for mercury in accordance with the requirements of local and state law.

(J) Rediscovery of mercury in the nondomestic user's discharge subjects said user to the submission of a new MRP, or escalation of enforcement in accordance with the city's ERP.

ADMINISTRATION

§ 54.55 WASTEWATER DISCHARGES.

To ensure compliance with applicable pretreatment standards and requirements, it shall be unlawful for any significant industrial user to discharge without a city permit, order or similar means to the POTW any wastewater except as authorized by the Supervisor in accordance with the provisions of this chapter.

§ 54.56 WASTEWATER DISCHARGE PERMITS.

(A) *Industrial user permits.* All significant industrial users and any industrial commercial users, as required by the city, shall obtain a wastewater discharge permit before connecting to or contributing to the POTW. All existing significant industrial users and industrial commercial users, as required by the city, connected to or contributing to the POTW shall obtain a wastewater discharge permit within two hundred seventy (270) days after the effective date of this chapter. Where a user subject to a national categorical pretreatment standard has not previously submitted an application for a wastewater discharge permit as required by this section, the user shall apply for a wastewater discharge permit within one hundred eighty (180) days after the promulgation of

the applicable national categorical pretreatment standards.

(B) *Local user permits.* The Supervisor may require any user other than an industrial user to obtain a local use permit to discharge to the POTW, subject to such terms and conditions as are determined necessary and appropriate by the POTW to achieve the purposes, policies and objects of this ordinance.

- (1) A local user permit may contain, but shall not be required to contain, any of the terms and conditions that would apply to an industrial user permit issued to an industrial user as provided by this section to comply with the general and specific discharge prohibitions of this ordinance, including, but not limited to, discharge limitations, and requirements regarding reporting, sampling and monitoring; pretreatment; pollution prevention, minimization or reductions plans; accidental discharge, spill prevention, and containment requirements; flow equalization; and implementation of best management practices or a best management practices plan.
- (2) To the extent determined appropriate by the Supervisor on a case-by-case basis, a local user permit issued under this subsection shall be subject to provisions otherwise applicable to permits for industrial users. However, all local user permits shall be non-transferable and are subject to the permit fee and permit appeals provisions of this ordinance.
- (3) It is unlawful for any user required by the Supervisor to obtain a local user permit to discharge to the POTW without a local user permit as provided by this section.
- (4) Failure to comply with a local user permit issued under this subsection constitutes a violation of this ordinance.
- (5) In no case shall a local user permit be construed to authorize the illegal discharge or otherwise excuse a violation of this ordinance.

(C) *Permit application.* Users required to obtain a wastewater discharge permit shall complete and file with the city an application in the form prescribed by the city. Existing applicable users shall apply for a wastewater discharge permit within 180 days after effective date of this chapter, and new applicable users shall apply at least 90 days prior to connecting to or contributing to the POTW.

- (1) In support of the application, the city may require the user to submit, in units and terms appropriate for evaluation, the following information:
 - (a) Name, address, and location of the facility including the name of the operator and owners;
 - (b) Standard Industrial Classification (SIC) number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;
 - (c) Wastewater constituents and characteristics, as determined by the Supervisor. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to § 304 of the Act, being 33 U.S.C. § 1314, and contained in 40 C.F.R. Part 136, as amended; where 40 C.F.R. Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in EPA publications, "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants," April 1977, and amendments thereto, or with any sampling and analytical procedures approved by the Administrator of the EPA. The permit application shall indicate the time, date and place of sampling and methods of analysis and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;
 - (d) Time and duration of discharges;
 - (e) Average daily and maximum daily wastewater flow rates, in gallons per day, including daily, monthly and seasonal variations, if any;

- (f) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation;
- (g) Description of activities, facilities and plant processes on the premises, including all materials which are or may be discharged to the POTW;
- (h) Nature and concentration of any pollutants or materials in the discharge which are limited by pretreatment standards, together with a statement regarding whether or not compliance is being achieved with the pretreatment standards on a consistent basis and if not, whether additional operation and maintenance activities and/or additional pretreatment is required for the user to comply with applicable pretreatment standards;
- (i) Where additional pretreatment and/or operation and maintenance activities will be required to comply with applicable pretreatment standards, the user shall provide a declaration of the shortest schedule by which the user will provide such additional pretreatment and/or implementation of additional operational and maintenance activities. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
 1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to comply with applicable pretreatment standards, including but not limited to dates relating to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, and all other acts necessary to achieve compliance with this chapter;
 2. Under no circumstances shall the city permit a time increment for any single step directed toward compliance which exceeds nine months;
 3. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the city, including no less than a statement as to whether or not it complied with the increment of progress represented by that date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the approved schedule. In no event shall more than nine months elapse between such progress reports to the city;
- (j) Each product produced by type, amount, process or processes and rate of production;
- (k) Type and amount of raw materials utilized (average and maximum per day);
- (l) Number and type of employees and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (m) All permit applications shall be signed by an authorized representative of the industrial user and shall contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations;

- (n) A listing of all environmental control permits held by or for the user; and
 - (o) Any other information as may be deemed by the city to be necessary to evaluate the permit application.
- (2) The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a wastewater discharge permit subject to terms and conditions provided herein.

(D) *Permit modifications.* Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standards within the timeframe prescribed by such standard. A user with an existing wastewater discharge permit shall submit to the Supervisor within 90 days after the promulgation of an applicable national categorical pretreatment standard the information required by subsections (C)(1)(h) and (i) of this section. The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements as identified in this section are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(E) *Required permit conditions.* Wastewater discharge permits shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the city. Permits must contain the following:

- (1) A unique identification number and user identification;
- (2) Statement of the wastewater discharge permit issuance date, expiration date and effective date;
- (3) Authorized flow on which the permit was based.
- (4) Effluent limits, including Best Management Practices, based on applicable pretreatment standards;
- (5) Self-monitoring, sampling, reporting, notification and recordkeeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
- (6) Applicable compliance schedule(s) for categorical standards, which may not extend beyond that required by applicable national, state or local law;
- (7) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. The schedule may not extend the compliance date beyond applicable national deadlines;
- (8) A statement that the wastewater discharge permit is nontransferable without prior notification to the city and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
- (9) Requirements to control slug discharge, if determined by the Supervisor to be necessary; and
- (10) Approval signature and date.

(F) *Additional permit conditions.* Wastewater discharge permits may contain, but need not be limited to the following conditions:

- (1) The user charge or schedule of user charges and fees for the wastewater to be

discharged to a community sewer;

- (2) Limits on the average and maximum wastewater constituents and characteristics;
- (3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
- (4) Requirements for installation and maintenance of inspection and sampling facilities;
- (5) Compliance schedules;
- (6) Requirements for submission of technical reports or discharge reports (see § 54.58);
- (7) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city and affording city access thereto;
- (8) Requirements for notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituent being introduced into the wastewater treatment system;
- (9) Requirements for notification of slug discharges as per § 54.42;
- (10) Other conditions as deemed appropriate by the city to ensure compliance with this chapter.

(G) *Permits duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of 90 days prior to the expiration of the user's existing permit.

(H) *Permit transfer.* Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be assigned or transferred or sold to a new owner, new user, or different premises without the prior approval of the city. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit.

(I) Any industrial user or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three (3) years any record of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the Director or the Regional Administrator.

§ 54.57 Contributing Municipality

(A) If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Supervisor shall enter into an intermunicipal agreement with the contributing municipality.

(B) Prior to entering into an agreement required by paragraph A, above, the Supervisor shall request the following information from the contributing municipality:

- (1) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
- (2) An inventory of all users located within the contributing municipality that are discharging to the POTW; and
- (3) Such other information as the Supervisor may deem necessary.

(C) An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:

- (1) A requirement for the contributing municipality to adopt a sewer use ordinance which is at

least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section § 54.58(D) of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the city's ordinance or Local Limits;

- (2) A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;
- (3) A provision specifying which pretreatment implementation activities, including individual wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Supervisor; and which of these activities will be conducted jointly by the contributing municipality and the Supervisor;
- (4) A requirement for the contributing municipality to provide the Supervisor with access to all information that the contributing municipality obtains as part of its pretreatment activities;
- (5) Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
- (6) Requirements for monitoring the contributing municipality's discharge;
- (7) A provision ensuring the Supervisor access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Supervisor; and
- (8) A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

§ 54.58 REPORTING REQUIREMENTS FOR PERMITTEE.

(A) Inspection, Sampling and Analysis.

- (1) The Supervisor may inspect the monitoring facilities of any discharger to determine compliance with the requirements of this section. The discharger shall allow the Supervisor to enter upon the premises of the discharger at all hours, for the purposes of inspection, sampling or records examination. The Supervisor shall have the right to set up on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations and have access to examine and copy any records. All costs associated with this monitoring requirement shall be borne by the discharger.
- (2) The reports required in this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The city shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the city. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 C.F.R. part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the

compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

- (a) For sampling required in support of baseline monitoring and 90-day compliance reports required in this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the city may authorize a lower minimum. For the reports required by this section, the city shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.
- (b) All analyses shall be performed in accordance with procedures established by the approval authority pursuant to section 304(h) of the Act and contained in 40 C.F.R. part 136 and amendments thereto or with any other test procedures approved by the approval authority. (See, §§136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the approval authority.
- (3) Where EPA 40 C.F.R., Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedure set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April, 1977, and amendments thereto or with any other sampling and analytical procedures approved by the Administrator of the EPA. Where the POTW performs all the required sampling and analyses and collects all the information required for the reports required in § 54.58, the significant industrial user will not be required to submit the report.
- (4) If sampling performed by a significant industrial user indicates a violation, the user shall notify the Supervisor within twenty-four (24) hours of becoming aware of the violation. At a minimum, the user is required to resample and analyze and submit results within thirty (30) days of becoming aware of the violation. The Supervisor may, with the issuance of a modified permit, require more frequent sampling and analysis. Resampling by the significant industrial user is not required if the city performs sampling at the user's facility between the time when the initial sampling was conducted and the time when the significant industrial user or city receives the results of this sampling. Where the city has performed the sampling and analysis in lieu of the industrial user, the city must perform any required repeat sampling and analysis unless it notifies the industrial user of the violation and requires the user to perform any required repeat analysis.
- (5) If a significant industrial user, subject to the reporting requirement in § 54.58, monitors any pollutant more frequently than required by the POTW, using the procedures prescribed in this section, the results of this monitoring shall be included in the report.
- (6) The reports required by § 54.58 shall include the following certification statement:

I certify under penalty of the law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted, it is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of penalty and imprisonment for knowing violations.

- (7) Signatory requirements for industrial user reports. The reports required by § 54.58 shall include the certification statement as set forth in Section (7), and shall be signed by an authorized representative of industrial user as defined in § 54.02.
- (8) If an authorization under paragraph (7), of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (7) of this section must be submitted to the Supervisor prior to or together with any reports to be signed by an authorized representative.
- (9) Reports of permittees shall contain all results of sampling and analysis of the discharge, including the flow, nature, concentration, production and/or mass, where required by the Supervisor.

(B) Periodic Compliance Reports. Any industrial user subject to categorical pretreatment standards shall submit to the Supervisor a report, as required in 40 C.F.R. § 403.12(e), indicating the nature and concentration of prohibited or regulated substances in the effluent. Unless alternative months are approved by the POTW, the reports shall be submitted for the six (6) month periods in June and in December. In cases where the pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the user must submit documentation required by the Supervisor or the pretreatment standard necessary to determine the compliance status of the significant industrial user. In addition, this report shall include a record of all measured or estimated average and maximum daily flows which during the reporting period exceeded the average daily flow reported in §54.56(C)(1)(e) hereof. Flows shall be reported on the basis of actual measurement provided, however, where cost or feasibility considerations justify, the Supervisor may accept reports of average and maximum flows estimated by verifiable techniques. The Supervisor, for good cause shown, considering such factors as local high or low flow rates, holidays, budget cycles, or other extenuating factors, may authorize the submission of said reports on months other than those specified above.

(C) Significant Non-Categorical User Compliance Report. For dischargers who are not subject to categorical pretreatment standards, but are subject to local limits, and discharge or have the potential to discharge substances which could adversely affect the POTW's operation, or for violating any pretreatment standard or requirement, a report is to be submitted in June and December, unless alternative months are approved by the POTW, following the commencement of the discharge to the Supervisor. The report shall specify a description of the nature, concentration, and flow of all prohibited or regulated substances contained in their discharge as set forth in 40 C.F.R. § 403.12(h) and Mich. Admin. Code R. 323.2310(7) and the average and maximum daily flow in gallons. The report shall state whether the requirements are being met on a consistent basis and, if additional pretreatment is necessary, to bring the discharge into compliance with the requirements. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the city to determine the compliance status of the user. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 C.F.R. part 136 of this chapter and amendments thereto. This sampling and analysis may be performed by the city in lieu of the significant non-categorical industrial user.

(D) Baseline Monitoring Report. Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard or one hundred eighty (180) days after the final administrative decision made upon a category determination request, or ninety (90) days prior to the commencement of discharge in the case of a new source, the industrial user shall submit a baseline monitoring report, signed by an authorized representative, in accordance with 40 C.F.R. § 403.12(b) and Mich. Admin. Code R 323.2310(2), for any discharge subject to national categorical pretreatment standards and requirements.

(E) Compliance Schedule Progress Reports. The following conditions shall apply to the compliance schedule required by § 54.56(E)(6) of this ordinance:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment

standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

- (2) No increment referred to above shall exceed nine (9) months;
- (3) The user shall submit a progress report to the Supervisor no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine (9) months elapse between such progress reports to the Supervisor.

(F) **Ninety Day Compliance Report.** Ninety (90) Day Report on Compliance with National Categorical Standards. Within ninety (90) days following the date for final compliance with applicable national categorical pretreatment standards, or in the case of a new source following the commencement of the introduction of wastewater into the POTW, any discharger subject to national categorical pretreatment standards and requirements shall submit a report in accordance with 40 C.F.R. § 403.12(d) and Mich. Admin. Code R 323.2310(3).

(G) **Notification of changed discharges.** All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharges.

- (1) Industrial users do not have an affirmative defense for the discharge of pollutants that result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health or safety problems.
- (2) Industrial users shall report any changes to information in the baseline monitoring report to the POTW within sixty (60) days.
- (3) All nondomestic user reports shall contain a certification statement by an authorized representative as outlined in section (A) above.
- (4) A nondomestic user shall notify the POTW in advance of any substantial change in the volume or character of pollutants in its discharge. These changes could include the following:
 - (a) Ground waters purged for remedial action programs;
 - (b) Ground waters containing pollutants that infiltrate into the sewers;
 - (c) Listed or characteristic hazardous wastes.

(H) **Hazardous Waste Notification.**

- (1) Any industrial or commercial user, except as specified in section (5) below, who discharges any substance to the POTW which, if otherwise disposed of, would be a listed or characteristic hazardous waste under 40 C.F.R. Part 261, shall notify the POTW, the EPA Regional Waste Management Division Director and the State hazardous waste authorities as set forth in 40 C.F.R. § 403.12(p) and Mich. Admin Code R 323.2310(15) in writing of such discharge.
- (2) All hazardous waste notifications shall include:
 - (a) The name of the hazardous waste as set forth in 40 C.F.R., Part 261;
 - (b) The EPA hazardous waste number;
 - (c) The type of discharge (continuous, batch or other); and

- (d) A certification that the user has a program in place to reduce the volume and toxicity of the hazardous wastes generated to the degree it has determined to be economically practical.
- (3) In addition to the information submitted in §54.58(H)(2), the reports from industrial and commercial users discharging more than one hundred (100) kilograms of hazardous waste per calendar month to the POTW shall contain the following information:
- (a) An identification of the hazardous constituents contained in the waste;
 - (b) An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
 - (c) An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months.
- (4) Hazardous waste notifications shall be submitted no later than thirty (30) days after the effective date of this section or prior to the discharge of listed or characteristic hazardous waste for discharges commencing after the effective date of this section, as required in § 54.56(F)(8). Any notification under this provision need be submitted only once for each hazardous waste discharged, although notifications of changed discharge must be submitted under § 54.56(F)(8). This Section does not apply to pollutants already reported as part of a significant industrial user discharge permit self-monitoring requirement. Industrial and commercial users are exempt from the hazardous waste notification requirement when they discharge fifteen (15) kilograms or less of non-acute hazardous wastes per calendar month. Discharge of any quantity of acutely hazardous waste as specified in 40 C.F.R. 261.30(d) and 261.33(e) requires a one (1) time notification.
- (5) In the case of any new regulations under Section 3001 of Resource Conservation and Recovery Act identifying additional characteristics of hazardous waste, the industrial user must notify the POTW, the EPA regional waste management division Director, and the state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of the regulations.

§ 54.59 MONITORING FACILITIES.

(A) When required by the city, each user shall provide and operate at the user's own expense a monitoring facility to allow inspection, sampling, and flow measurement of each sewer discharge to the city. Each monitoring facility shall be situated on the user's premises, except where such a location would be impractical or cause undue hardship on the user, the city may concur with the facility being constructed in the public street or sidewalk area providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. The samples must be representative of the user's discharge.

(B) All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications and shall be approved by the city.

§ 54.60 INSPECTION AND SAMPLING.

(A) The city under the direction of the Supervisor shall randomly sample and analyze the effluent from industrial users and conduct surveillance and inspections activities to verify the industrial self-monitoring reports as stated in 40 C.F.R. § 403.8.(f)(2)(v). The city may inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the city or their representative ready access to all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination or in the performance of any of their duties. The city, EGLE, and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance

monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city, EGLE and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(B) The city shall observe all safety rules applicable to the premises established by the user and the user shall be held harmless for injury or death to the city employee, and the city shall indemnify the company against loss or damage to its property by the city employee and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the user to maintain safe conditions.

§ 54.61 RECEIVE AND ANALYZE SELF-MONITORING REPORTS.

The city under the direction of the Supervisor shall receive and analyze all self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 40 C.F.R. § 403.12 as is stated in 40 C.F.R. § 403.8.(f)(2)(iv). The Supervisor shall, after review, send a written report with comments or suggestions to the industrial user.

§ 54.62 INVESTIGATION OF INSTANCES OF NONCOMPLIANCE.

The city shall, under the direction of the Supervisor, investigate instances of noncompliance with pretreatment standards and requirements which are found in reports and notices required in 40 C.F.R. § 403.12 or in surveillance and inspection activities in 40 C.F.R. § 403.8.(f)(2)(v). Sufficient care shall be taken during the investigation that the evidence produced is admissible in enforcement proceedings or in judicial actions as is stated in 40 C.F.R. § 403.8.(f)(2)(vii).

§ 54.63 NOTICE OF VIOLATION/REPEAT SAMPLING AND REPORTING.

If sampling performed by a user indicates a violation, the user must notify the Supervisor within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Supervisor within thirty (30) days after becoming aware of the violation. Resampling by the Industrial User is not required if the city performs sampling at the user's facility at least once a month, or if the city performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the city receives the results of this sampling, or if the city has performed the sampling and analysis in lieu of the industrial user.

§ 54.64 PRETREATMENT.

(A) Users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all national categorical pretreatment standards, Local Limits, and the prohibitions set forth in Section 54.35 of this ordinance within the time limitations as specified by EPA, the state, or Supervisor, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review. The city will review such plans and respond with suggested modifications within thirty (30) days following plan submittal. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to the city prior to the user's initiation of the changes.

(B) The city shall annually publish in the largest local newspaper of local distribution a list of the categorical industrial users that are in significant noncompliance of any pretreatment requirements or standards during the twelve (12) previous months, as is required under the public participation requirements of 40 C.F.R. Part 25.

(C) All records relating to compliance with pretreatment standards and requirements shall be made available to officials of the EPA or EGLE upon request.

§ 54.65 CONFIDENTIAL INFORMATION.

(A) Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information processes or methods of production entitled to protection as trade secrets of the user.

(B) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this chapter, the national pollutant discharge elimination system (NPDES) permit, state disposal system permit and/or the pretreatment programs; provided, however, that such portions of the report shall be available for use by the state or any state agency judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

§ 54.66 RECORDKEEPING REQUIREMENTS

(A) Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section, including documentation associated with Best Management Practices. Such records shall include for all samples:

- (1) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
- (2) The dates analyses were performed;
- (3) Who performed the analyses;
- (4) The analytical techniques/methods use; and
- (5) The results of such analyses.

(B) Any industrial user subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three (3) years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by EGLE and the EPA (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by EGLE or the EPA.

(C) Any POTW to which reports are submitted by an industrial user pursuant to this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by EGLE and the EPA. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW Pretreatment Program or when requested by EGLE or the EPA.

ENFORCEMENT

§ 54.75 HARMFUL CONTRIBUTIONS.

(A) The city may immediately suspend or terminate the wastewater treatment service, wastewater discharge permit, and/or any discharge into the city's wastewater system when such suspension or termination is necessary, in the opinion of the city, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment, causes interference to the POTW, pass through, or causes the city to violate any condition of its NPDES permit.

(B) Any person notified of a suspension or termination of the wastewater treatment service, the wastewater discharge permit and/or discharge into the city's wastewater system shall immediately stop or eliminate the

contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The city shall reinstate the wastewater discharge permit and/or wastewater treatment service upon proof, at a show cause hearing scheduled in accordance with § 54.78 below, of the elimination of the noncompliance. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city within fifteen (15) days of the date of occurrence.

§ 54.76 REVOCATION OF PERMIT.

Any user who violates the following conditions of this chapter or applicable state and federal regulations is subject to having his permit revoked in accordance with the procedures of this chapter:

- (A) Failure of a user to report factually the wastewater constituents and characteristics of his discharge;
- (B) Failure of the user to report significant changes in operations or wastewater constituents and characteristics;
- (C) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- (D) Violation of conditions of the permit.

§ 54.77 NOTIFICATION OF VIOLATION.

Whenever the city finds that any user, or any other person or entity has violated or is violating this chapter, wastewater discharge permit, or any prohibition or limitation or requirements contained within, the city shall serve or cause to be served upon such user a written notice either personally or by first class mail, return receipt requested, stating the nature of the alleged violation. Within thirty (30) days of the date of receipt of the notice, the user shall respond personally or in writing to the city, advising of its position with respect to the allegations. Thereafter, the parties shall meet to ascertain the veracity of the allegations and, where necessary, establish a plan for the satisfactory correction thereof. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Supervisor to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

§ 54.78 SHOW CAUSE HEARING.

(A) The city may order any user, or any other person or entity which causes or allows conduct prohibited by §54.75, has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to show cause before the city or its duly authorized representative why the proposed service termination action should not be taken. A written notice shall be served on the user specifying the time and place of a hearing to be held by the city or its designee regarding the violation, the reasons why the enforcement action is to be taken, the proposed enforcement action, and directing the user to show cause before the city or its designee why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by first class mail not less than ten days before the hearing. Service may be made on any agent, officer, or authorized representative of a user.

(B) The City Commission may itself conduct the hearing and take the evidence or may designate any of its members or any office or employee of the assigned department to:

- (1) Issue in the name of the City Commission notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
- (2) Take the evidence;

- (3) Transmit a report of the evidence and hearing, including transcripts, and other evidence, together with recommendations to the City Commission for action thereon.

(C) At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded stenographically. The transcript so recorded will be made available to any member of the public or any part to the hearing upon payment of the usual charges thereof.

(D) After the City Commission has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, and that such devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

§ 54.79 CONSENT ORDERS.

The Supervisor may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any user, or any other person or entity responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to § 54.78, § 54.80 and § 54.81 of this ordinance and shall be judicially enforceable.

§ 54.80 COMPLIANCE ORDERS.

When the Supervisor finds that a user, or any other person or entity has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Supervisor may issue an order to the user, person or other entity responsible for the discharge directing that the user, person or entity come into compliance within a specified time. If the user, person or other entity does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user, person or entity of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

§ 54.81 CEASE AND DESIST ORDERS.

(A) *Order to immediately cease and desist discharge.* The Supervisor may issue an order to cease and desist from discharging any wastewater, pollutant, or discharge not in compliance with this ordinance. The order shall have immediate effect if the actual or threatened discharge to the POTW presents, or may present imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes or may cause interference or pass through. The Supervisor shall implement whatever action is necessary to halt or prevent the discharge, including but not limited to, emergency suspension of service. The user shall be assessed for any penalties, fines, charges, surcharges, expenses, or losses incurred due to the actual or threatened discharge of pollutants as provided by this ordinance.

(B) *Order to cease discharge within a time certain.* The Supervisor may issue an order to cease and desist from discharging any wastewater, pollutant, or discharge not in compliance with this ordinance by a certain time and date. The proposed time for remedial action shall be specified in the order. In addition to any other circumstances as determined appropriate by the Supervisor, an order may be issued under this section for failure to pay applicable permit fees or to comply with any term of a user permit.

§ 54.82 JUDICIAL PROCEEDINGS.

Following the entry of any order by the city with respect to the conduct of a user contrary to the provisions of § 54.75, or user or any other person or entity that has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other pretreatment standard or requirement, the attorney for the city may, following the authorization of such action by the city, commence an action for appropriate legal and/or equitable relief in the appropriate local court.

§ 54.83 RIGHT OF APPEAL.

Any user or any interested party shall have the right to request in writing an interpretation or ruling by the city on any matter covered by this chapter and shall be entitled to a prompt written reply. In the event that such inquiry is by a user and deals with matters of performance or compliance with this chapter for which enforcement activity relating to an alleged violation is the subject, receipt of a user's request shall stay all enforcement proceedings pending receipt of the aforesaid written reply. Appeal of any final judicial order entered pursuant to this chapter may be taken in accordance with local and state law.

§ 54.84 AFFIRMATIVE DEFENSE.

The response to a user's noncompliance is normally dependent on the violation significance, compliance history, suspected intention, and attitude. However, there are the following affirmative defense provisions in the law.

(A) For upset events, there is an affirmative defense if the user can demonstrate through operating logs or other relevant evidence that: (i) an upset occurred and the causes can be identified; (ii) the facility was at the time being operated in a prudent and workmanlike manner in accordance with standard Operations and Maintenance procedures; and (iii) the user has submitted to the Supervisor the information required per Mich. Admin. Code R 323.2315(2)(c)i-iii within 24 hours of becoming aware of the upset.

(B) For pass through and/or interference events, there is an affirmative defense if the user can demonstrate that: (i) it did not know that its discharge, alone or in combination with discharges from other sources, would cause the violation; and (ii) it was in compliance with a corresponding local limit, or there was no local limit, before/during the violation and the discharge did not change substantially.

(C) A user shall have an affirmative defense in any action brought against it alleging specific prohibitions under § 54.35(2), (7), (12) or (13) if the user can demonstrate that all of the conditions necessary to establish the defense under Mich. Admin. Code R 323.2303(3)(a) and (b) are met. However, even if the affirmative defense is established, the user may still be liable for surcharges for exceeding applicable discharge limitations as provided by this ordinance. In any enforcement proceeding, the user seeking to establish the affirmative defenses provided by Mich. Admin. Code R 323.2303(3) shall have the burden of proof.

§ 54.85 BYPASS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

BYPASS. The intentional diversion of waste streams from any portion of an industrial user's treatment facility.

SEVERE PROPERTY DAMAGE. Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial or permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(B) *Limited Allowance.* An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of divisions (C) and (D) of this section.

(C) *Notice.*

- (1) If an industrial user knows in advance of the need for a bypass that is not otherwise allowed, it shall submit prior notice to the control authority, if possible, at least ten days before the date of the bypass.
- (2) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the

bypass. The written submission shall contain a description of the bypass and its causes; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(D) *Prohibition of bypass.*

- (1) A bypass, if not otherwise allowed pursuant to division (B) of this section or approved pursuant to subdivision (D)(2) below, is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The industrial user submitted notices as required under division (C) of this section.
- (2) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three conditions listed in subsection (D)(1) of this section.

§ 54.86 OPERATING UPSETS.

(A) Any user which experiences an upset in operations which place the user in a temporary state of noncompliance with categorical pretreatment standards shall immediately inform the city thereof and in no case later than twenty-four (24) hours of first awareness of the commencement of the upset. Where such information is given orally, a written follow up report thereof shall be filed by the user with the city within five days.

(B) The report shall specify:

- (1) Description of the upset, the cause thereof and the upset's impact on a user's compliance status;
- (2) Duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur; and
- (3) All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or other conditions of noncompliance.

§ 54.87 NET/GROSS CALCULATION.

Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section.

(A) *Application.* Any industrial user wishing to obtain credit for intake pollutants must make application to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (adjusted to reflect pollutants in the intake water) if the requirements of this section are met.

(B) *Criteria.*

- (1) The industrial user must demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

- (2) Credit for genetic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the genetic measure in the user's effluent are substantially similar to the constituents of the genetic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
- (3) Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard(s) adjusted under this section.
- (4) Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.
- (5) The applicable categorical pretreatment standards contained in 40 C.F.R. subchapter N specifically provide that they shall be applied on a net basis.

§ 54.88 RECOVERY OF COSTS INCURRED BY THE CITY.

Any user violating any of the provisions of this chapter or who discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the city's wastewater disposal system shall be liable to the city for any expense, loss, or damage caused by such violation or discharge. The city shall bill the user for the costs incurred by the city for any cleaning, repair, or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this chapter enforceable under the provisions of this chapter.

§ 54.99 PENALTY.

(A) *Administrative fines.* Notwithstanding any other section of this chapter, any user who is found to have violated any provision of this chapter or permits and orders issued hereunder shall be fined in an amount not to exceed one thousand (\$1,000) per violation. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. Such assessments may be added to the user's next scheduled sewer service charge, and the Supervisor shall have such other collection remedies as he has to collect other service charges. Unpaid charges, fines and penalties shall constitute a lien against the individual user's property. Individual users desiring to dispute such fines must file a request for the City Manager to reconsider the fine within ten days of being notified of the fine. Where the City Manager believes a request has merit, he shall convene a hearing on the matter within 15 days of receiving the request from the industrial user.

(B) *Civil penalties.* Any user who is found to have violated an order of the city or who willfully or negligently failed to comply with any provision of this chapter and the orders, rules, and regulations and permits issued hereunder shall be fined not more than one thousand (\$1,000), plus actual damages incurred by the POTW per violation per day for as long as the violation continues. In addition to the penalties provided herein, the city may recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated this chapter or the orders, rules, regulations, and permits issued hereunder.

(C) *Criminal Penalties.* Any user convicted of the following may be punished by a fine of not more than five hundred dollars (\$500) per violation per day, or imprisonment for not more than ninety (90) days, or both:

1. Willfully or negligently introduces any substance into the POTW which causes personal injury or property damage. (This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.)
2. Willfully or negligently violates any provision of an individual wastewater discharge permit, this ordinance, an Order of the city, or any other pretreatment standard or requirement.
3. Falsifies, tampers with, or knowingly renders inaccurate any required monitoring device or method.

4. Knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation required by a permit, this ordinance, an Order of the city, or any other pretreatment standard or requirement.

§ 54.100 SEVERABILITY Sections of this ordinance shall be deemed severable and should any section, clause or provision of this ordinance be declared invalid, the same shall have no effect on the validity of the ordinance as a whole or any other part not so declared to be invalid.

APPENDIX 1

Standard Ordinance Limits and Surcharges for Discharges of Certain Pollutants:

<u>Parameter</u>	<u>Daily Max. mg/l</u>
LIMITATIONS FOR COMPATIBLE POLLUTANTS	
Ammonia Nitrogen (NH ₃ as N) ¹	35
BOD ₅ ²	300
Phosphorous Total ³	16.9
TSS ⁴	300
FOG Nonpolar	100
FOG Total	250
LIMITATIONS FOR SPECIFIC CONSTITUENTS	
Arsenic	0.017
Cadmium	0.015
Chromium Total	1.1
Copper	0.59
Cyanides Available	0.07
Lead	0.14
Mercury	NQ ⁵
Molybdenum	0.2
Nickel	1.2
Selenium	0.096
Silver	0.042
Zinc	1.5
Cis 1, 2-Dichloroethylene	5.7
Trans – 1, 2-Dichloroethylene	2.0
Trichloroethylene	0.026
Vinyl Chloride	0.012

¹ Any discharge of ammonia nitrogen in excess of 20 mg/l shall be subject to surcharge as provided by this Ordinance.

² Any discharge of BOD₅ in excess of 200 mg/l shall be subject to surcharge as provided by this Ordinance.

³ Any discharge of Phosphorous Total in excess of 4.3 mg/l shall be subject to surcharge as provided by this Ordinance.

⁴ Any discharge of TSS in excess of 160 mg/l shall be subject to surcharge as provided by this Ordinance.

⁵ NQ = Non-quantifiable concentration, defined as at or above the quantification level of 0.0002 mg/l using U.S. EPA Method 245.1 (or at or above other quantification levels applicable under alternative test methods required by the Supervisor or by other applicable laws or regulations). Mercury sampling procedures, preservation and handling, and analytical protocol for compliance monitoring of a user's discharge shall be in accordance with U.S. EPA method 245.1, unless the Supervisor requires U.S. EPA Method 1631 (or other appropriate method). The quantification level shall be 0.0002 mg/l for Method 245.1 or 0.0000005 mg/l for Method 1631, unless higher levels are approved by the Supervisor because of sample matrix interference.

APPENDIX 2
MAIL Limits:

<u>Parameter</u>	<u>MAIL Daily Max. (lbs./day)</u>
LIMITATION FOR COMPATIBLE POLLUTANTS	
Ammonia Nitrogen (NH ₃ as N)	55
BOD ₅	378
Phosphorous Total	35
TSS	979
FOG Nonpolar	296
FOG Total	382
LIMITATIONS FOR SPECIFIC CONSTITUENTS	
Arsenic	0.128
Cadmium	0.142
Chromium Total	1.02
Copper	0.393
Cyanides Available	0.104
Lead	0.324
Mercury	---
Molybdenum	0.507
Nickel	0.917
Selenium	0.0629
Silver	0.0351
Zinc	1.7
Cis – 1, 2 – Dichloroethylene	6.45
Trans – 1, 2-Dichloroethylene	15.7
Trichloroethylene	2.31
Vinyl Chloride	0.133

Section 3. Validity and Severability. If any portion of this Ordinance or its application to any person or circumstance shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the Ordinance which can and shall be given effect without the invalid portion or applications, provided the remaining portions are not determined by the court to be inoperable, and to this end Ordinances are declared to be severable.

Section 4. Repealer Clause. Any ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 5. Effective Date. This Ordinance shall be effective twenty (20) days after final approval.

**CITY OF ST. JOHNS
RESOLUTION #20-2023**

**RESOLUTION TO INTRODUCE AN ORDINANCE TO REGULATE THE KEEPING
OF ANIMALS**

At a regular meeting of the City Commission of the City of St. Johns, Clinton County, Michigan, held at the City Hall, in said City on the 24th day of July, 2023 at 6:00 p.m., Local Time.

Present: _____

Absent: _____

The following resolution was offered by _____ and supported by _____.

WHEREAS, pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 et seq., as amended (“MZEA”), the City has the authority to regulate the use of land within the City; and

WHEREAS, the City desires to add Section 155.200 to Chapter 155 of the City Code to regulate the keeping of animals in residential zoning districts; and

WHEREAS, upon giving notice in accordance with the MZEA, the City Planning Commission held a public hearing to consider the Ordinance; and

WHEREAS, on July 12, 2023, the Planning Commission voted to recommend adoption of the Ordinance to the City Commission; and

WHEREAS, the City desires to introduce the Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of St. Johns as follows:

1. The City introduces Ordinance No. 678, An Ordinance to Regulate the Keeping of Animals.
2. To the extent that any resolution or portion of resolution is inconsistent with this Resolution, such resolutions or portions of resolutions are hereby rescinded.

ADOPTED:

YEAS: _____

NAYS: _____

STATE OF MICHIGAN)
)
COUNTY OF CLINTON)

I, the undersigned, the duly qualified and acting Clerk of the City of St. Johns, Clinton County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the City Commission of said City at a regular meeting held on the 24th day of July 2023.

Mindy Seavey, City Clerk

ORDINANCE NO. 678
AN ORDINANCE TO REGULATE THE KEEPING OF ANIMALS

THE CITY OF ST. JOHNS ORDAINS:

Section 1. Addition of Chapter 155, a new section 155.200. §155.200 is added to the City Code to read as follows:

§ 155.200 Keeping of Animals.

(A) Definitions.

- (1) Domesticated Animals.** Animals taken care of in their day-to-day needs by humans.
 - (2) Livestock.** A domesticated animal raised for slaughter or kept for the purposes of contributing to an agricultural use through labor, breeding, or the production of milk, eggs, manure, wool, or other animal-based products. The following animals shall be considered livestock in all instances: cattle, horses, pigs, sheep, goats, turkeys, and chickens.
 - (3) Exotic or Wild Animals.** Any animal not commonly domesticated in Michigan that is kept as a pet, raised for slaughter, or used for agricultural purposes, especially animals that pose a clear and present danger to humans. The following animals shall be considered exotic or wild animals in all instances: big cats, venomous snakes, birds of prey, primates, deer, racoons, and opossums.
- (B)** All domesticated animals must be kept in safe and sanitary conditions appropriate to their species and in compliance with all County, State, and Federal standards.
- (C)** The following domesticated animals may be kept on a residentially zoned lot.

(1) Livestock.

- (a)** A Zoning Permit shall be required to keep livestock on a lot. The Zoning Administrator shall have the jurisdiction to determine that an animal is considered livestock under this ordinance, based on the definition in Subsection A. Appeals of the decision of the Zoning Administrator shall be to the Zoning Board of Appeals.
- (b)** Livestock with fur shall be prohibited within 500 feet of any dwelling unit. Examples include, but are not limited to: cattle, sheep, and horses.
- (c) Chickens.** Chickens shall only be permitted in the following circumstances.

- (i) Chickens shall only be permitted in the R-1, R-2, and R-3 Zoning Districts.
- (ii) Lots under one acre shall be permitted to have up to four chickens. Lots over one acre shall be permitted to have up to six chickens.
- (iii) Roosters shall not be permitted.
- (iv) The slaughtering of any chicken is prohibited.
- (v) Chickens must be kept within a covered enclosure, including a coop and a run, at all times. Chickens shall not be allowed to roam the lot or any other property. The covered enclosure shall be exempt from the standards governing fences in Section 155.187 and shall instead be subject to the regulations of this section.
- (vi) The enclosed area where the chickens are kept, including the coop and the run, must meet the following standards:
 - 1) It shall not be located in a front yard.
 - 2) It shall be set back at least 10 feet from any lot line and any residence on the same lot as the chicken enclosure.
 - 3) It shall be set back at least 40 feet from any residence that is not on the same lot as the chicken enclosure.
 - 4) It shall not exceed the maximum allowable height for a detached accessory structure in the zoning district it is located within.
 - 5) It shall count as a structure for the purpose of calculating the maximum permitted lot coverage.
 - 6) It shall be maintained in a clean and neat matter at all times.
 - 7) The following materials shall not be used to construct the enclosure area: tarps, plastic, fabric, rubber, paper, cardboard, or other non-traditional building materials.
- (vii) Chicken feed must be kept in rodent-proof, sealed containers.
- (d) **Bees.** Bees may be kept on any lot, provided the bee enclosure is located in the rear yard and is set back at least 20 feet from any lot line.

(D) Exotic or Wild Animals. Exotic or Wild Animals shall not be kept as domesticated animals anywhere in the City. See Chapter 92 of the City Code of Ordinances.

(E) Kennels. See Section 155.437.

Section 2. Repeal and Replace. Any and all ordinances inconsistent with this Ordinance are hereby repealed, but only to the extent necessary for this Ordinance to be in full force and effect.

Section 3. Publication and Effective Date. The City Clerk shall publish a notice of adoption of this Ordinance within 15 days of its adoption. This Ordinance shall take effect 7 days after its publication, but no less than 20 days after its adoption.

YEAS:

NAYS:

ABSTAIN:

ABSENT:

CERTIFICATION

As the City Clerk of the City of St. Johns, Clinton County, Michigan, I certify that this is a true and complete copy of an ordinance adopted by the St. Johns City Commission at a regular meeting held on _____, 2023.

Scott Dzurka, Mayor

Mindy J. Seavey, Clerk

**CITY OF ST. JOHNS
RESOLUTION #21-2023**

**RESOLUTION TO INTRODUCE AN ORDINANCE TO ELIMINATE
THE LIMIT ON PSYCHOLOGICAL PATIENTS IN MEDICAL FACILITIES**

At a regular meeting of the City Commission of the City of St. Johns, Clinton County, Michigan, held at the City Hall, in said City on the 24th day of July, 2023 at 6:00 p.m., Local Time.

Present: _____

Absent: _____

The following resolution was offered by _____ and supported by _____.

WHEREAS, pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 et seq., as amended (“MZEA”), the City has the authority to regulate the use of land within the City; and

WHEREAS, the City desires to amend Section 155.004 of Chapter 155 of the City Code to add a definition for “incarcerated” and to amend Section 155.433 to eliminate the limit on psychiatric patients in medical facilities; and

WHEREAS, upon giving notice in accordance with the MZEA, the City Planning Commission held a public hearing to consider the Ordinance; and

WHEREAS, on July 12, 2023, the Planning Commission voted to recommend adoption of the Ordinance to the City Commission; and

WHEREAS, the City desires to introduce the Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of St. Johns as follows:

1. The City introduces Ordinance No. 679, An Ordinance To Eliminate The Limit On Psychological Patients In Medical Facilities, attached as Exhibit A.
2. To the extent that any resolution or portion of resolution is inconsistent with this Resolution, such resolutions or portions of resolutions are hereby rescinded.

ADOPTED:

YEAS: _____

NAYS: _____

STATE OF MICHIGAN)
)
COUNTY OF CLINTON)

I, the undersigned, the duly qualified and acting Clerk of the City of St. Johns, Clinton County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the City Commission of said City at a regular meeting held on the 24th day of July 2023.

Mindy Seavey, City Clerk

ORDINANCE NO. 679

**AN ORDINANCE TO ELIMINATE
THE LIMIT ON PSYCHOLOGICAL PATIENTS IN MEDICAL FACILITIES**

THE CITY OF ST. JOHNS ORDAINS:

Section 1. Amendment of Section 155.004 of Chapter 155. Section 155.004 of Chapter 155 is amended to add a definition for “incarcerated” where alphabetically appropriate and such definition shall read as follows:

INCARCERATED: A person currently serving a criminal sentence in a County, State, or Federal correctional facility.

Section 2. Amendment of Section 155.433(A) of Chapter 155. Section 155.433(A) of Chapter 155 is amended in its entirety to read as follows:

(A) The total number of beds used for treating incarcerated patients does not exceed 20% of the total beds available at the hospital.

Section 3. Repeal and Replace. Any and all ordinances inconsistent with this Ordinance are hereby repealed, but only to the extent necessary for this Ordinance to be in full force and effect.

Section 4. Publication and Effective Date. The City Clerk shall publish a notice of adoption of this Ordinance within 15 days of its adoption. This Ordinance shall take effect 7 days after its publication, but no less than 20 days after its adoption.

YEAS:

NAYS:

ABSTAIN:

ABSENT:

CERTIFICATION

As the City Clerk of the City of St. Johns, Clinton County, Michigan, I certify that this is a true and complete copy of an ordinance adopted by the St. Johns City Commission at a regular meeting held on _____, 2023.

Scott Dzurka, Mayor _____

Mindy J. Seavey, Clerk _____



MCKENNA

July 19, 2023

City Commission
City of St. Johns
100 E. State Street, Suite 1100
St. Johns, Michigan 48879

Subject: 500 N. Lansing Avenue Special Use Review

Dear Commissioners,

The Planning Commission has recommended approval of a Special Use Permit at 500 N. Lansing Avenue. The applicant proposes to construct a new building storage building for Youngstrom Construction on the currently-vacant site.

The site is zoned MU Mixed Use District. Storage for a contractor is not specifically listed as a permitted use, but is similar to “Business offices of a public utility, transportation, advertising, real estate, insurance, commercial or industrial establishment,” which is allowable as a Special Use. Therefore, the applicant has requested Special Use Approval. Our Special Use comments follow.

Site Plan approval is also required. The Planning Commission granted a conditional approval of the Site Plan on July 12.

Special Use Criteria. In order to be approved, the City Commission, upon recommendation of the Planning Commission, must determine that the proposed uses meet the standards of Section 155.258, which are the general standards applicable to all Special Uses. Section 155.258 includes the following criteria:

a) Will be harmonious with and in accordance with the community development plan. In order to be considered “harmonious and in accordance”, the Special Use proposal must:

- **Be consistent with the City’s goals for Land Use, Neighborhoods, Transportation, and Sustainability as articulated in Chapter 3 of the City of St. Johns Master Plan.** The relevant pages of the Master Plan are attached for reference.

This proposal advances Land Use Goals 1, 4, and 5, and is neutral on Goal 2 (which is specifically related to the core downtown) and Goal 3 (which is specifically about the Federal Mogul/FC Mason site).

It also advances Neighborhood Goal 1, while being neutral about Goals 2, 3, and 4 (which are more specific to housing and historic preservation).

With regard to Transportation goals, it is neutral on all goals.



The proposal is also neutral on the specific Sustainability goals, though it advances the City's broader Sustainability goal of creating jobs in the core of the City to reduce commute times and improve walkability.

- **Positively promote the vision described for the Community Character Area that the use will be located in, as described in Chapter 4 of the City of St. Johns Master Plan.**

The proposed use is located in the "Downtown Edge" Community Character Area, which describes the appropriate land uses as follows:

Uses that can serve as a transition between the downtown and the neighborhoods are encouraged. Uses should be a mix of commercial, professional offices, residential, technology, and civic. The goal of this area is to allow existing uses to continue while creating an opportunity for different types of uses in the future if sites are redeveloped.

The proposed contractor's storage building and yard advance the economic vitality of the area by replacing a vacant lot. The use is not exactly what the Master Plan envisions – it will have few on-site jobs, and will not create spinoff development. However, if the building is designed to meet the requirements of Section 155.196, it will be a positive addition to the neighborhood that can be economically productive throughout its useful life.

- **Not hinder the implementation of the Mobility Plan for the street(s) it is adjacent to, as described in Chapter 6 of the City of St. Johns Master Plan.**

The use will not contribute to traffic congestion or safety issues, and thus will not hinder the implementation of the mobility plan.

- b) **Will be designed, constructed, operated, and maintained so as to be safe, harmonious and appropriate in appearance with the existing or intended character of the general vicinity. Factors affecting this standard include noise, lighting, parking, traffic, garbage, large gatherings of people, water runoff, neighborhood character, heat island effect, and other similar off-site impacts of a use.**

The biggest concerns about the use stem from the gravel storage area in the rear. However, if that area is designed to meet the requirements of the Zoning Ordinance – specifically the 30 foot setback from the rear lot line, and the required screening fence – negative impacts should be mitigated.

- c) **Will be a substantial improvement to property in the immediate vicinity and an economic asset to the community as a whole. "Substantial improvement" and "economic asset" shall mean that the proposed use will clearly generate more economic activity, tax revenue, jobs, housing units, and/or spinoff development than the site would generate without the approved Special Use. In evaluating this criteria, the City Commission shall compare the site to its current state at the time of application, not to hypothetical alternative developments other than the proposed Special Use.**



The Mixed Use district is limited in the businesses that it allows by right. Special Use permits have been approved in the past to allow a wide variety of businesses nearby. In this case, the business is developing a vacant lot, adding jobs and tax revenue that did not previously exist.

- d) Will be served adequately, based on the anticipated needs of the use in question, by existing public facilities and services, such as highways, streets, police and fire protection, drainage structures, parking lots, refuse disposal, water and sewer utilities, non-motorized pathways/sidewalks, communications infrastructure, public transportation, waste removal, and schools. The City Commission may also require upgrades to public services directly related to the proposal as a condition of Special Use approval.**

Businesses of a similar scale have operated nearby and have not negatively impacted public facilities and services so the impact on highways, streets, drainage, water/sewer, sidewalks communications, Blue Bus, waste removal, and schools will be minimal. See Criteria F for an analysis of the impact on parking.

We will defer to the police and fire departments regarding the impact on those services.

- e) Will be consistent with the Purpose and Intent of allowing Special Uses (see Section 155.255) and the Purpose and Intent of the Zoning District the Special Use is located within.**

The purpose and intent of allowing Special Uses is:

“The special use permit process is based on the concept that some uses are appropriate in a zoning district only under certain circumstances and with specific conditions. The special use permit review process allows the city to review a proposed use, determine if it is appropriate in the location proposed and what conditions are required to be placed on the use to ensure it’s compatibility with other uses in the area.”

The City specifically designated a wide variety of businesses as Special Uses in the MU District, in recognition of the diverse land use character that exists within that district. This particular parcel has long been vacant, and the proposed use can meet the site design requirements to locate there.

The purpose and intent of the MU Zoning District is:

“The MU District is intended to cover an area north of the railroad right-of-way near the CBD. It is intended to serve as a buffer between the residential uses to the north and the commercial and industrial uses to the south and east.”

Lansing Avenue specifically includes a number of commercial buildings that create a transition from the core downtown to the residential neighborhoods to the north and west. The proposed Special Use is appropriate in that context.



- f) **Will be served by adequate, safe, and efficient parking. “Adequate, safe, and efficient parking” shall mean not only meeting the requirements of Section 155.342, but also ensuring that the parking for the use does not burden nearby uses, does not create safety hazards for motorists, cyclists, or pedestrians, does not take up excessive land that could be used for more productive purposes, and does not create a blight on the historic character and charm of the City.**

The small parking lot will be located to the side of the building, avoiding pedestrian-automobile conflicts, and allowing the front yard of the development to be landscaped and pedestrian-friendly.

- g) **Comply with the applicable design standards outlined for the specific proposed use in Sections 155.415 through 155.448 of this chapter.”**

See our Site Plan letter.

RECOMMENDATION

We recommend that the City Commission approve the Special Use.

Please let us know if you have any questions.

Respectfully submitted,
McKENNA

Christopher Khorey, AICP
Senior Principal Planner

I, the undersigned, the duly qualified and acting Clerk of the City of St. Johns, Clinton County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the City Commission of said City at a regular meeting held on the 24th day of July, 2023.

Mindy Seavey, City Clerk



MEMORANDUM

CITY OF ST. JOHNS

To: Chad Gamble, City Manager
St. Johns City Commission

From: Mindy J. Seavey, City Clerk

Date: July 18, 2023

Subject: 2024 Elections – Early Voting

In November of 2022, Proposal #2-2022 was passed. This proposal was for a change to voting laws in Michigan, with one of the biggest components of this being 9 days of early voting for each State or Federal Election.

Clinton County Clerk, Deb Sutherland, held a meeting with local clerks on May 10th. At that time, there wasn't a lot of information available yet. Recently, eight election-related bills were passed by both chambers of the legislature and were sent to the Governor, who signed the bills on July 18th. On July 18th, the county clerk held another meeting with local clerks and had Lori A. Bourbonais, Director, Election Administration Division, with the Bureau of Elections attend to answer questions. The meeting was almost 3 hours long and covered a lot of information.

The main decision we have to make at this time is whether we hold the 9 days of early voting on our own or if we coordinate with other jurisdictions within the county and have 2-3 sites available in the county for all Clinton County voters for early voting. Currently, the discussion is to have a southern site located at Dewitt Township Offices and a northern site located at Bingham Township Hall, there was also a third possible site discussed. If we coordinated, the county would buy the required equipment for the early voting precincts (laptop, scan device (tabulator), and ballot on demand machine) and rent it to the jurisdictions that are participating in the 2-3 county-wide early voting sites. We would all also share the cost of election workers for those sites. Local clerks would also participate by either being a precinct coordinator (1 per early voting site) or a precinct supervisor (1 per day, per site). If we hold the 9 days on our own, we pay for those costs ourselves.

Due to the cost for additional equipment, not having a precinct within the city that we can use for 9 days straight, cost of election workers, city staff availability, etc. I would recommend that we coordinate with other jurisdictions in the county for early voting. We are meeting again in mid-August for clerks to bring back their board's decision and by mid-September the county would need to have coordination agreements in place.

On another note, there was legislation approved to move the Presidential Primary ahead from March 12, 2024 to February 27, 2024, but this will not go into effect until 90 days after the legislature adjourns, which is normally sometime in December. The legislature could adjourn early, but clerks may not know until late November which date the Presidential Primary will be held.

In 2024, Michigan will be the only state to offer all 3 voting options: early voting, election day voting, and absentee voting.

RECOMMENDATION: Staff recommends that the city commission approve coordinating with other jurisdictions in Clinton County to hold early voting at coordinated precincts in Clinton County.

2023 Social District Responses

In Favor: 22

Keith Koneval, Dale Abraham, Lara Boettger, Tracy Kossaras, Mary Ablao, Kirk Gartside, John Serrine, Brent and Megan Hurst, Kim Zuehlke , Kelly Schafer, Steve Van Ells, Emily Kendall, Nicol Devereaux, Bill Brewbaker, Rehmann's (but they don't allow any drinks in the store), Heather Reed, Lindsay Wood, Ken Jones, Shana and Dean Mazzolini, Diane Gibbs, Hailey Edwards (from the Brewery), Liz Janetske

Against: 5

Ed Lamb, Deb at Jet Speed, Alissa Munger, Tim McCowan, Ruth Pasch

Comments:

Lara, Edward Jones: Yes – I would love to see this in our town. My only concern would be that the towns I have seen it in seem to be more touristy areas where there are a lot of fun and interesting shops. We have some wonderful retail stores downtown, but I'm not sure there's enough that people would want to walk around with their drinks (except perhaps during special events). I love this idea though and I would love to see it be successful. Thanks for asking for input from others.

I don't believe this is practical, why not concentrate on something for the kids to do instead of opening avenues that could cause serious problems. The bars already allow you to have your drinks on the patio or at the tables outside. This is Debbie, not Jim criticizing this idea.

Alissa is not in favor. Her business brings a lot of children downtown and she doesn't feel they should be exposed to people drinking alcohol.

Johns Serrine: Could this be done with a time limit that would end at 9pm daily?

Kim Pictured Home: My only concern is trash, and if someone is out of hand with the drinking who is going to keep it under control, what if someone spills their drink on my furniture who is liable to replace that 800.00 dollar chair.....

I think it's great and hopefully changes the foot traffic....but these concerns are valid.....we want money in our pockets not going out....

2023 Social District Responses

Kelly Schafer: Fantastic idea. I have seen Bark & Brew events, would be super fun.

Steve Van Ells I have had a positive experience in other Social Districts. I don't know any of the statistics for police matters or how the bars/restaurants are impacted. But purely in the role of a patron out to have a good time I have enjoyed social districts.

Emily Adornmint: It's Emily ... YAAAASSSSSSSS that would be amazing !!!!!!!!!!!!!!! Anything to increase foot traffic and drinky people spend \$\$ lol

Bill Brewbaker: I'd be in favor of it, one concern I'd have is the establishments selling the drink, are they liable for anything once it leaves their premises? I would think not, but Something an atty should answer. The other thing that will be important is how our police officers are engaged in it? It'd be nice to have a friendly presence so people do not get out of hand or damage cars, planters, etc. but on the other side, we don't want them to use it as a DUI trap either.

Tim MacCowan I would not be interested in having something like that here in Saint Johns. I have to deal with enough people coming in here at my shop after having a few drinks wanting to get something done. It's against the law for me to do so. I'm just saying there are 4-5 places that sell drinks and at least 2 of them have outside spaces already. That's my take on it. Thanks Tim

Rehmann's: Not sure. We would probably be in favor. We do not allow beverages in our store, so if this passes, we wouldn't allow alcoholic beverages either.

I just wanted to voice my support for the social district. My office in Lansing is located in a social district and it's been great. We haven't experienced any issues related to it and I've seen more people strolling/looking into the windows at various shops in the area than I did pre-social district. Thanks Kenneth L. Jones

New

Shana Mazzolini: I personally like the idea. I think it could bring more people into town and our business could have the opportunity to have outdoor activities a lot easier. I'm not sure deans exact opinion but believe he said it would be beneficial

Ruth Pasch: This is my response to your inquiry of the formation of a Social District in downtown St. Johns.

To begin with I am unclear as to how much area such a District would include. In the June 22 nd information it was stated consumption would occur within the

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designated commons area. Then in the same information it was mentioned the area would increase foot traffic. So which is it? Do the permit holders stay within a designated area, or are they wandering the streets and in retail establishments?

If inside the stores, are we certain the owners of those businesses want people with drinks inside their stores?

Also what would be the process for a Social District permit holder to be a licensed

premise? Would there be a fee to be one and how would that fee be determined?

It might also increase the cost of law enforcement to monitor the Social District.

What thought has been given to that issue?

What would be the safeguard of drinks not being taken to the drinkers' vehicles and driving with open alcohol?

What days, nights and hours would this Social District be in operation?

We currently have three eating or drinking establishments offering outdoor services. What I have observed of these is the patrons enjoy the outdoor services, but it does not increase foot traffic to other businesses.

You can conclude I am not in favor of this. Do we want St. Johns to be known as an open drinking town?

Thank you for your attention to my response.

Diane Gibbs: I am not opposed to it, it is worth a discussion

Hailey Edwards: We are all for Downtown creating a Social District! Just a couple of questions; Would this be only during Downtown Events or all year long? Only certain times of the day? We are all for bringing money to Downtown but safety is always a concern for us, what regulations would be in place? Would there be an increased police presence within the Social District? You don't have to answer my questions right away, just some things to think about when discussing next steps if the Social District is approved.

Liz Janetske (library) Reading the agenda reminded me of the Social District Discussion. Everyone that I've talked to is in support of it. Those that have visited towns that are social districts are very much in support of it! However, two people had the same question I said I'd ask you about. Would people carry purchased beverages anywhere within the district even inside other businesses? If so, how do owners/managers handle their no food or beverage policy?