City of Swartz Creek
AGENDA
Regular Council Meeting, Monday July 23, 2012 7:00 P.M.
Elms Road Park Pavilion #2, 4125 South Elms Road, Swartz Creek Michigan 48473
In Case of Rain: City Hall Building, 8083 Civic Drive Swartz Creek, Michigan 48473

1.	**CALL TO ORDER:**			
2.	**INVOCATION AND PLEDGE OF ALLEGIANCE:**			
3.	**ROLL CALL:**			
4.	**MOTION TO APPROVE MINUTES:**			
	4A.	Regular Council Meeting of July 9, 2012	MOTION	Pg. 6, 7-18
5.	**APPROVE AGENDA**			
	5A.	Proposed / Amended Agenda	MOTION	Pg. 6
6.	**REPORTS & COMMUNICATIONS:**			
	6A.	City Manager's Report (Agenda Item)	MOTION	Pg. 6, 2-5
	6B.	Monthly Fire Report		Pg. 19-52
	6C.	Marathon Title Legal Work (Agenda Item)		Pg. 53-55
	6D.	Tri-County Lease (Agenda Item)		Pg. 56-62
	6E.	Morrish I-69 Overpass Repair Estimates		Pg. 63-70
	6F.	Web Email Access		Pg. 71
	6G.	Heritage Land Use Notice		Pg. 72-73
	6H.	County EMD Flood Debriefing		Pg. 74
	6I.	Comcast Litigation		Pg. 75-118
	6J.	Consumer Energy Notice of Hearing		Pg. 119
	6K.	Center Stage Play Notice		Pg. 120
	6L.	T-Mobile Tower Lease Proposal		Pg. 121
7.	**MEETING OPENED TO THE PUBLIC:**			
	7A.	General Public Comments		
8.	**COUNCIL BUSINESS:**			
	8A.	City Engineer Updates, CEO John D. Matonich	PRES.	
	8B.	Marathon Re-Development Update	DISC.	Pg. 53-55
	8C.	Tri-County Tower Lease	DISC.	Pg. 56-62
	8D.	City Web Site, Related Services	DISC.	Pg. 5
9.	**MEETING OPENED TO THE PUBLIC:**			
	9A.	General Public Comments		
10.	**REMARKS BY COUNCILMEMBERS:**			
11.	**ADJOURNMENT:**		MOTION	TABLE

City of Swartz Creek
CITY MANAGER'S REPORT
Regular Council Meeting of Monday July 23, 2012 7:00 P.M.

TO: **Honorable Mayor, Mayor Pro-Tem & Council Members**
FROM: **PAUL BUECHE //** City Manager
DATE: 20-July-2012

OLD / ROUTINE BUSINESS – REVISITED ISSUES / PROJECTS

- ✓ **MAJOR STREET FUND, TRAFFIC IMPROVEMENTS** *(See Individual Category)*
  - ❑ **2011-2014 T.I.P. APPLICATION** *(Status)*

    Here is a schedule of City projects that are funded or in the queue (shaded).

2011-2014 TIP, PENDING PROJECTS FUNDED & QUEUED *(shaded)*

Project	Year	Grant	City Match	P.E.	C.E.	Total
Bristol Road @ GM-SPO	2013	$54,912	$13,728	$8,000	$16,000	**$92,640**
Morrish Road Bridge Deck Over Creek	2013	$584,000	$132,000*	$30,000	$60,000	**$806,000**
Miller Between Tallmadge & Dye	Unfunded	$951,602	$237,901	$76,000	$120,000	**$1,385,503**
Miller Between Seymour & Elms	Unfunded	$1,635,357	$408,839	$100,000	$160,000	**$2,304,196**
Totals:		**$3,225,871**	**$792,468**	**$214,000**	**$356,000**	**$4,588,339**

*Includes Enhancements, Walk-Way & Lighting

Design on the Morrish Road Bridge is complete and has been submitted to MDOT for review. Incorporated into the design are the non-participating enhancements as well as the road closure for construction. The project is estimated to last for two months and will be timed while the school is on summer break (2013). I'll keep the Council posted on developments.

- ✓ **COUNTY WWS ISSUES PENDING** *(See Individual Category)*
  - ❑ **KAREGNONDI WATER AUTHORITY** *(Status)*

    Pending.
  - ❑ **SEWER I&I PENALTIES, REHABILITATION** *(Status)*

    We approved Phase IV of the sewer rehabilitation project (Winshall Drive) at the meeting of July 25th, the cost being $82,492.50 (work halted at around $10k). The TV work has revealed we have one for sure, and possibly a second that will need to be excavated to repair. The first is a broken line that's off-set and the second is a "top down" lead into the main that the connection at the main is crushed. The second may be able to be lined but we must be prepared to excavate if the process fails. We've left the deteriorated areas for now until the ground dries up a bit, in towards summer. This work may get expensive as the mains are in the backyards, which will require the removal of fences and the like in order to get to the problem. To further complicate the matter, one of the problem areas has a garage in our easement, very close to where we have to dig. At any rate, we need to get together a very specific bid package that includes a survey to identify easement lines and encroachments. We also will need to factor in maximum costs for property we may damage, prepare grading permits and waivers of liability. We approved light design engineering,

survey and bid package preparation in the amount of $6,847 at the meeting of February 27th. We'll be back for review and decision as soon as we get the bids back.

- ❑ **BEAR CREEK SANITARY SEWER AGREEMENT** (*Status*)
  Pending the outcome of the Morrish Road Bridge Project.

- ✓ **MARATHON REDEVELOPMENT PROJECT** *(Discussion)*
  The Council selected the Biggby Project at the Special Meeting of February 20th. Here is the schedule:

RFP Issued	September 8, 2011
Pre-Bid Meeting	September 29, 2011 @ 4:00 p.m.
RFP Response Deadline	November 1, 2011 @ 4:00 p.m.
Presentations by Invitation:	February 2, 2012
Council Selection:	February 20, 2012
Purchase Agreement:	June, 2012
Planning Commission Site Plan:	June-July, 2012
Final Site Plan Approval, Develop Agreement Approval:	July-August, 2012
Commence Construction:	Late Summer, 2012

  I've run into some snags with the closing title work. Included with tonight's packet is a Circuit Court filing for quiet title resolve. I've set this for a brief update discussion.

- ✓ **PERSONNEL & POLICIES & PROCEDURES** *(Status)*
  Pending.

- ✓ **CITY PROPERTY, 4438 MORRISH ROAD** *(Status)*
  We'll look at a disposition for the house at 4438 Morrish in the spring.

- ✓ **LABOR CONTRACTS, BUILDING DEPARTMENT** *(Status)*
  The POLC and AFSCME contracts have been settled. The Supervisor's contract should be back before the Council at the next meeting or so. The only loose ends are the at-will part time police officers and the building inspector's employment agreement. I'll keep the Council informed on progress.

- ✓ **FIRE DEPARTMENT: BOARD, CONTRACT & COST RECOVERY** *(Status)*
  Pending.

- ✓ **SPRINGBROOK EAST & HERITAGE ASSOCIATION S.A.D.** *(Status)*
  All that remains is to accept the streets into our Act #51 Street System. This process is a bit lengthy insofar as legal steps required assuring a proper transfer. Mr. Figura has prepared the paperwork on this end. There are several steps the Associations need to complete before we can begin our process. As soon as we get past this busy spurt, I'll fire up the Associations to start the process.

- ✓ **SIGN ORDINANCE** *(Status)*
  Pending draft changes from the meeting of February 2nd.

- ✓ **SHARED SERVICES INITIATIVE** *(Status)*
  Pending a draft report.

- ✓ **SCHOOL PERFORMING ARTS CENTER** (*Status*)
  Construction and associated "dry weather dust" is underway.

- ✓ **STREET RE-STRIPING & SYMBOLS** (*Status*)
  Tom is trying to get another round of crack filling into the budget for Miller Road. For the obvious reason, any striping will have to be done after this project. We will be back in a month or two with a recommendation.

- ✓ **MEIJER SITE PLAN & ADDENDUM** (*Status*)
  The Council approved an amended site plan allowing for the construction of a gross square foot store of 192,214 along with related changes to parking, traffic circulation, lighting, landscaping, and signage, all of which have been deemed by the City's staff as minor and within the general concept of the original site plan approval. We are in the process of re-negotiating the development agreement with Meijer. On paid-in capital, Meijer funded improvements capped at $1,500,000. To date, they have paid $1,095,000. They owe the City $52,873, which when invoiced and paid, will put their contribution, to date, for the Morrish project at $1,147,873. This leaves $352,127 left to fund traffic lights that *may or will* be needed at the Morrish Road I-69 ramp and at Bristol and Morrish intersection. Progressive AE has submitted preliminary design plans to MDOT and they are awaiting an answer. Construction has begun.

- ✓ **FIVE-YEAR PARKS & RECREATION PLAN, ELMS PARK PROJECT** (*Status*)
  Awaiting a draft.

- ✓ **FLOOD RELIEF** (*Status*)
  We participated in the County Emergency Management Division's collection of damage reports in order to apply for FEMA Disaster Relief Funding. This funding has been denied and in place, the offer of SBA low interest loans. In the meantime, we are now in possession of something close to 200 written "reports of damage" that are being viewed by attorneys and uninsured residents as sewage backup claims against the City for damages. We're working through them with the assistance of MML Claims and Mr. Figura.

- ✓ **TRAFFIC SIGNALS, BRISTOL & MILLER** (*Status*)
  Set for review after Labor Day.

- ✓ **CLASS "C", "SDM" LIQUOR LICENSES, NEW** (*Status*)
  Pending a new submission by the applicant.

- ✓ **I-69 MORRISH ROAD BRIDGE APPROACH, REPAIR DISPUTE** (*Status*)
  As you know, we've run into a bit of a dispute involving the repair of the approach to the bridge deck for southbound Morrish at I-69. The grade on the west side of Morrish just to the north of the bridge deck is extremely steep, maybe around 60˚. The side of the embankment is eroding away, the heavy rainfall of May 3-4 having caused significant damage. MDOT is telling us that the repair cost and responsibility is ours. Included is a cost repair estimate that outlines three potential options that are acceptable to our engineer. When asked to produce a document that explains why the City would be required to repair roads deep within the state's right of way, MDOT points at an obscure Act from 1993 followed by a state internal memo from 2002. In review of the documents, I disagree on the repair responsibility. The grade differential is a direct result of the bridge, which in my point of view, makes it part of the structure. In other words, if the freeway was not there, Morrish Road would be a flat and level roadway. We've appealed one more time and we'll see what their decision is.

NEW BUSINESS / PROJECTED ISSUES & PROJECTS

- ✓ **TRI-COUNTY LEASE AGREEMENT** (*Discussion*)
  In 2006, and then again in 2007, we entered into lease agreements with Tri-County Wireless, an internet provider, for the location of a transceiver on top of the water tower at Miller & Seymour (copy included with tonight's packet). The lease is scheduled to expire in September and Tri-county requests to renew it. They are paid up in good standing. Additionally, they have advised us that they can provide wireless "hotspots" in any or all locations in the City. I have not discussed the matter beyond this with Tri-County as before I do, I would like to review options with the Council. I have set this for a short discussion at tonight's meeting.

- ✓ **CITY WEB SITE, RELATED SERVICES** (*Discussion*)
  We've had some light discussion pertaining to change, payments and on-line records regarding this subject. We've begun looking at options here but before we put a lot of effort into it, I'd like to get some feedback from the Council. I've set it for discussion at tonight's meeting.

Council Questions, Inquiries, Requests and Comments

- *Deteriorated Retaining Walls & Planters at City Buildings.* The wall along the north side of the building has been repaired. We are looking at options on some of the other repairs around the site.
- *Youth Programs in Park.* Officer Szmansky has scheduled a youth day in Elms Park. We'll see how the attendance goes.
- *Downtown Deteriorated Signs, 8048 Miller.* Turned over to our code guy.
- *Bus, Gil-Roy Plaza.* We probably have no authority on this one, but we'll try and get the owner to search for another solution.
- *Flood Damage, Apple Creek Apartments.* Looking into the City's authority.
- *Deteriorated Grain Elevator Building, Morrish at CNA Crossing.* We met with the owners of the property on the condition of the elevator portion. I'm far less than enthused that there's a simple solution to this. The highest and best use there today is what you see. The cost of the removal of the building and associated compliant environmental work would likely exceed the property value. We'll continue to push for some change but quite frankly, I'm unsure what that might be and might make matters worse (such as all buildings abandoned).

City of Swartz Creek
RESOLUTIONS
Regular Council Meeting, Monday July 23, 2012 7:00 P.M.

Resolution No. 120723-4A **MINUTES – JULY 9, 2012**

Motion by Councilmember: _____

I Move the Swartz Creek City Council approve the Minutes of the Regular Council Meeting held July 9, 2012 to be circulated and placed on file.

Second by Councilmember: _____

Voting For:_____
Voting Against: _____

Resolution No. 120723-5A **AGENDA APPROVAL**

Motion by Councilmember: _____

I Move the Swartz Creek City Council approve the Agenda as presented / printed / amended for the Regular Council Meeting of July 23, 2012, to be circulated and placed on file.

Second by Councilmember: _____

Voting For: _____
Voting Against: _____

Resolution No. 120723-6A **CITY MANAGER'S REPORT**

Motion by Councilmember: _____

I Move the Swartz Creek City Council approve the City Manager's Report of July 23, 2012, to be circulated and placed on file.

Second by Councilmember: _____

Voting For: _____
Voting Against: _____

City of Swartz Creek
Regular Council Meeting Minutes
Of the Meeting Held
Monday July 9, 2012 7:00 P.M.

CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 07/9/2012

The meeting was called to order at 7:00 p.m. by Mayor Abrams in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

Councilmembers Present:	Abrams, Binder, Hicks, Hurt, Krueger, Shumaker.
Councilmembers Absent:	Porath.
Staff Present:	City Manager Paul Bueche, City Clerk Juanita Aguilar.
Others Present:	Tommy Butler, Joe Perreault, Larry Cummings, Mike Martin, Dennis Brockway, Boots Abrams, Bud Grimes, Sharon Shumaker, Ron Schultz, Denny Olson, Jim Florence, John Gilbert, Steve Shumaker.

Resolution No. 120709-01 **(Carried)**

Motion by Councilmember Hurt
Second by Councilmember Hicks

I Move the Swartz Creek City Council excuse the absence of Councilmember Porath from the June 25, 2012 meeting and this meeting due to a work conflict.

YES: Binder, Hicks, Hurt, Krueger, Shumaker, Abrams.
NO: None. Motion Declared Carried.

APPROVAL OF MINUTES

Resolution No. 120709-02 **(Carried)**

Motion by Mayor Pro-Tem Krueger
Second by Councilmember Hurt

I Move the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting, held June 25,, 2012, to be circulated and placed on file.

YES: Hicks, Hurt, Krueger, Shumaker, Abrams, Binder.
NO: None. Motion Declared Carried.

APPROVAL OF AGENDA

Resolution No. 120709-03 **(Carried)**

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the Agenda, as printed, for the Regular Council Meeting of July 9, 2012, to be circulated and placed on file.

YES: Hurt, Krueger, Shumaker, Abrams, Binder, Hicks.
NO: None. Motion Declared Carried.

REPORTS AND COMMUNICATIONS:

City Manager's Report

Resolution No. 120709-04 **(Carried)**

Motion by Councilmember Hicks
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager's Report of July 9, 2012, as amended, to be circulated and placed on file.

Discussion took place.

YES: Krueger, Shumaker, Abrams, Binder, Hicks, Hurt.
NO: None. Motion Declared Carried.

All other reports and communications were accepted and placed on file.

MEETING OPENED TO THE PUBLIC:

Mayor Abrams presented four proclamations to 4 gentlemen who did a significant amount of work on Elms Park; Dennis Brockway, Mike Martin, Denny Olson, Joe Perreault.

COUNCIL BUSINESS:

Adopt City-Wide Rates, Fees and Charges (Bulk Water Purchases)

Resolution No: 120709-05 **(Carried)**

Motion by Councilmember Binder
Second by Councilmember Hurt

WHEREAS, the City collects rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services, and;

WHEREAS, such rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services are a necessary and essential part of the funding for the services that the City provides, and:

WHEREAS, the City's Code of Ordinances defines and provides for certain rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services, and;

WHEREAS, other such rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services are provided for by resolution of the City Council, statutory provision, past practice, policy and other such actions, and

WHEREAS, the City has amended the City's Code of Ordinances to provide for various rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services to be set by resolution of the City Council, and;

WHEREAS, the City has need to implement additional rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services to be set by resolution of the City Council, and;

WHEREAS, the City desires to have all such rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services organized into a single resolution that can be visited periodically and adjusted accordingly.

NOW, THEREFORE, Be It Resolved the City of Swartz Creek hereby sets its rates, fees, fees for permits, charges for services, cost recovery's and cost recovery for consulting services in accordance with the following schedule, effective immediately or as soon as practical thereafter, table as follows:

CITY OF SWARTZ CREEK RATES, FEES PERMITS & CHARGES FOR SERVICES

1. Chapter 1: Municipal Ordinance Violations Bureau (Parking Fines)

The following parking violations shall be punishable by the fines indicated:

Offense	Fine
(a) Parking too far from curb	$ 20.00
(b) Angle parking violations	$ 20.00
(c) Obstructing traffic	$ 20.00
Prohibited parking (signs un-necessary)	
(d) On sidewalk	$ 20.00
(e) In front of drive	$ 20.00
(f) Within intersection	$ 20.00
(g) Within 15 feet of hydrant	$ 20.00
(h) On crosswalk	$ 20.00
(i) Within 20 feet of crosswalk or 15 feet of corner lot lines	$ 20.00
(j) Within 30 feet of street side traffic sign or signal	$ 20.00
(k) Within 50 feet of railroad crossing	$ 20.00
(l) Within 20 feet of fire station entrance	$ 20.00

(m) Within 75 feet of fire station entrance on opposite side of street (signs required)	$ 20.00
(n) Beside street excavation when traffic obstructed	$ 20.00
(o) Double parking	$ 20.00
(p) On bridge of viaduct or within tunnel	$ 20.00
(q) Within 200 feet of accident where police in attendance	$ 20.00
(r) In front of theater	$ 20.00
(s) Blocking emergency exit	$ 20.00
(t) Blocking fire escape or fire lane	$ 50.00
(u) In a handicapped space	$100.00
(v) In prohibited zone (signs required)	$ 20.00
(w) In alley (signs required)	$ 20.00

Parking for prohibited purpose

(x) Displaying vehicle for sale	$ 20.00
(y) Working or repairing vehicle	$ 20.00
(z) Displaying advertising	$ 20.00
(aa) Selling merchandise	$ 20.00
(bb) Storage over 48 hours	$ 20.00
(cc) Wrong side boulevard roadway	$ 20.00
(dd) Loading zone violation	$ 20.00
(ee) Bus, parking other than bus stop	$ 20.00
(ff) Taxicab, parking other than cab stand	$ 20.00
(gg) Bus, taxicab stand violations	$ 20.00
(hh) Failure to set brakes	$ 20.00
(ii) Parked on grade wheels not turned to curb	$ 20.00
(jj) Parked on lawn extension within right of way	$ 20.00

All $20.00 violations not paid within 20 days will be accessed a $10.00 late fee.

2. **Chapter 2: Liability for Expense of an Emergency Operation (Hazardous Materials Cleanup Cost Recovery)**
   Cost shall be actual expenses inclusive of all Police & Fire Department wages, equipment and motor-pool and / or any sub-contracted actual expenses associated with hazardous materials clean-up.

3. **Chapter 2: Liability for Expense of an Emergency Response (Alcohol Related Arrests, Accidents)**
   A. A cost of $150 shall be assessed to each defendant convicted of O.U.I.L. – O.U.I.D or O.W.I. The cost recovery shall be collected as a part of the fines and costs set by the 67th District Court.

   B. Actual costs shall be assessed to each defendant convicted of O.U.I.L. – O.U.I.D or O.W.I. in which a motor vehicle accident occurred. The cost recovery shall be collected as a part of the fines and costs set by the 67th District Court. In the event the court declines collection, they shall be billed direct to the defendant.

   C. For the purpose of determining costs for extensive investigation and cleanup recovery for emergency response for alcohol related arrests and accidents, the following table shall be used:

Police Personnel	$40	Per Hour
Police Clerical	30	Per Hour
Police Car	15	Per Hour
Fire Personnel	20	Per Hour
Fire Pumper	250	Per Hour
Fire Support Vehicles	100	Per Hour

4. **Chapter 5: Cemetery Lots - Purchase**
   The cost for purchase of cemetery lots will be $100.00 per lot.

5. **Chapter 5: Cemetery, Charges for Grave Openings, etc.**
Grave openings shall be actual costs, either as sub-contracted or performed by City Employees, plus a 15% administrative fee.

6. **Chapter 11: Park Reservation Fees**

Elms Park

Pavilion #1	$ 70.00
Pavilion #2	$ 120.00
Pavilion #3	$ 70.00
Pavilion #4	$ 120.00

Winshall Park

Pavilion #1	$ 70.00
Pavilion #2	$ 70.00
Pavilion #3	$ 70.00

7. **Chapter 15: Permit, Sidewalk Installation**
$25.00

8. **Chapter 15: Permit for Excavation, Right of Way or Other City Property**
$100.00

9. **Chapter 19: Water System Use, Rates and Charges**

(A) Charges for water supply services to premises within the city connected with the water supply system shall be as follows:

Rates for Quarterly Billings

Readiness to serve charge

5/8", 3/4", 1"	$47.45
1.5"	$200.70
2"	$321.12
3"	$602.10
6"	$2,007.00

Commodity charge (per 100 cubic feet of water consumed): $3.53

Additional meters, connected for the exclusive purpose of registering water consumed and NOT returned to the sewer system shall be charged the commodity charge only (example: lawn sprinkler system).

(B) Any water customer may have water services temporarily shut off for any time period during which the premises, for which the water service is provided, will be unoccupied. The request for such shut off shall be made in writing on forms to be provided by the city. The written request shall specify the reason for the shut off and the date on which the water service shall be shut off.

(C) There shall be a Twenty Dollar ($20.00) charge for shutting off the water service pursuant to such request and a Twenty Dollar ($20.00) charge for turning the water service back on, if the shut off or turn on is performed during normal business hours. If this shut off or turn on is performed outside of normal business hours, the charge shall be One-Hundred Dollars ($100.00). Such charges shall also apply if water is shut off or turned back on pursuant to account delinquency. The City Manager may waive shut off and turn on fees for reasonable cause.

(D) Water customers shall continue to be billed for a readiness to service charge while connected to the system.

(E) Bulk water sales shall be in accordance with the following fee schedule:

Bulk Water Purchases
1 cubic ft. = 7.4805 Gallons

Gallons	Cubic ft.	Cost	
3,740	499.96658	$83.17	(minimum charge)
5,000	668.40452	$91.10	
10,000	1336.809	$122.68	
15,000	2005.2136	$154.21	
20,000	2673.6181	$185.78	

10. Chapter 19: Water & Sewer Tap Fees

(A) There shall be paid, with respect to all premises connecting to the water and sanitary sewer system of the city, a tap-in fee pursuant to the following schedules:

(1) Single-family residence--$1,500 each for water & sanitary sewer

(2) Multiple-family residence--$1,500 per unit each for water and sanitary sewer

(B) All other uses connecting to the water and/or sanitary sewer system of the city shall be required to pay tap-in fees at the rate of one-thousand, five hundred dollars ($1,500) per unit factor, pursuant to the unit factor table provided for by the Genesee County Division of Water and Waste. In no case shall tap-in fees be less than one-thousand, five hundred dollars ($1,500).

(C) Furthermore, for any structure used generally for more than one (1) purpose, connection fees shall be determined by applying the appropriate unit factors as set by the Genesee County Division of Water and Waste, to the various uses on any level, grade or sub-grade plane of the structure, provided that it is intended that the fees so derived shall be cumulative. Tap fees shall also apply for any additional units that may be calculated and applied by the County WWS pursuant to change in use or otherwise.

11. Chapter 19: Sanitary Sewer Rates

Rates for Quarterly Billings

Readiness to serve charge (per metered account):	$48.70
Readiness to serve charge (non-metered accounts):	$119.58
Commodity charge (per 100 cubic feet of water consumed):	$1.57

A readiness to serve charge equal to the number of calculated sewer units shall be charged to all customers connected to the city's sewer system to offset fixed costs of system operation. In addition, a commodity charge shall be applied to the sewer bill in an amount equal to the above rate multiplied by the number of ccf that the accompanying water account registers. If the sewer connection is not accompanied by a water meter to register water usage, the charge shall be considered non-metered and no commodity charge shall be applied.

For the purposes of determining sanitary sewer rates, per unit sewage disposal calculations resulting in a fraction of a whole number shall be rounded up to the next highest whole number.

12. Chapter 20: Weed Cutting Fees

$300 per cut

13. Building & Trade Inspection Fees

A. Building Permit Fees: Appendix A 21.06

$50.00 for first $1,000 value $5.00 per $1,000 thereafter and $50.00 for a one-time Inspection fee.

B. Electrical Inspection Fees

Application Fee (non-refundable)	$50

Service

Through 200 Amp.	$10
Over 200 Amp. thru 600 Amp.	$15
Over 600 Amp. thru 800 Amp.	$20
Over 800 Amp. thru 1200 Amp.	$25
Over 1200 Amp. (GFI only)	$50
Circuits	$5
Lighting Fixtures-per 25	$6
Dishwasher	$5
Furnace-Unit Heater	$5
Electrical-Heating Units (baseboard)	$4
Power Outlets (ranges, dryers, etc.)	$7

Signs

Unit	$10
Letter	$15
Neon-each 25 feet	$20
Feeders-Bus Ducts, etc.-per 50’	$6
Mobile Home Park Site	$6
Recreational Vehicle Park Site	$4

K.V.A. & H.P.

Units up to 20	$6
Units 21 to 50 K.V.A. or H.P.	$10
Units 51 K.V.A. or H.P. & over	$12

Fire Alarm Systems (excl. smoke detectors)

Up to 10 devices	$50
11 to 20 devices	$100
Over 20 devices	$5 each

Data/Telecommunication Outlets

1-19 devices	$5 each
20-300 devices	$100
Over 300 devices	$300
Energy Retrofit-Temp. Control	$45
Conduit only or grounding only	$45

Inspections

Special/Safety Insp. (includes cert. fee)	$50
Additional Inspection	$50
Final Inspection	$50
Certification Fee	$20

C. Mechanical Inspection Fees

Application Fee (non-refundable)	$50

Residential Heating System (includes duct & pipe, new building only)	$50
Gas/Oil Burning Equipment (furnace, roof top units, generators)	$30
Boiler	$30
Water Heater	$5
Damper	$5
Solid Fuel Equip. (includes chimney)	$30
Gas Burning Fireplace	$30

Chimney, factory built (installed separately)	$25
Solar; set of 3 panels-fluid transfer (includes piping)	$20
Gas piping; each opening-new installation (residential)	$5
Air Conditioning (includes split systems)	
RTU-Cooling only	$30
Heat Pumps (complete residential)	$30
Dryer, Bath & Kitchen Exhaust	$5

Tanks

Aboveground	$20
Aboveground Connection	$20
Underground	$25
Underground Connection	$25
Humidifiers/Air Cleaners	$10

Piping-minimum fee $25

Piping	$.05/ft
Process piping	$.05/ft
Duct-minimum fee $25	$.10/ft
Heat Pumps; Commercial (pipe not included)	$20

Air Handlers/Heat Wheels

Under 10,000 CFM	$20
Over 10,000 CFM	$60
Commercial Hoods/Exhausters	$15
Heat Recovery Units	$10
V.A.V. Boxes	$10
Unit Ventilators	$10
Unit Heaters (terminal units)	$15

Fire Suppression/Protection

(includes piping) –minimum fee $20	$.75/head
Evaporator Coils	$30
Refrigeration (split system)	$30
Chiller	$30
Cooling Towers	$30
Compressor/Condenser	$30

Inspections

Special/Safety Insp. (includes cert. fee)	$50
Additional Inspection	$50
Final Inspection	$50
Certification Fee	$20

D. Plumbing Inspection Fees

Application Fee (non-refundable)	$50

Mobile Home Park Site

Fixtures, floor drains, special drains,	$5 each
Water connected appliances	$5 each
Stacks (soil, waste, vent and conductor)	$3 each
Sewage ejectors, sumps	$5 each
Sub-soil drains	$5 each

Water Service

Less than 2”	$5

2” to 6”	$25
Over 6”	$50
Connection (bldg. drain-bldg. sewers)	$5

Sewers (sanitary, storm or combined)

Less than 6”	$5
6” and Over	$25
Manholes, Catch Basins	$5 each

Water Distributing Pipe (system)

¾” Water Distribution Pipe	$5
1” Water Distribution Pipe	$10
1 ¼” Water Distribution Pipe	$15
1 ½” Water Distribution Pipe	$20
2” Water Distribution Pipe	$25
Over 2” Water Distribution Pipe	$30
Reduced pressure zone back-flow preventer	$5 each
Domestic water treatment and filtering equipment only	$5
Medical Gas System	$45

Inspections

Special/Safety Insp. (includes cert. fee)	$50
Additional Inspection	$50
Final Inspection	$50
Certification Fee	$20

14. Appendix B: Franchises

$250 application fee plus actual expenses related to preparation by City Attorney.

15. Miscellaneous Fees

A. *Copies:*
Black & White: 50¢ for the first page & 10¢ for each additional page.
Color or Mixed Color and Black & White: 50¢ for the first page & 20¢ for each additional page.

B. *Freedom of Information Act Requests:*
50¢ for the first page and 10¢ for each additional page (20¢ for color or mixed color and black & white) plus all actual costs for outside re-production (i.e. photo re-prints, blueprint copies, etc.). Extensive search requests shall have an additional per hour fee equal to wages only of the lowest paid clerical position employed with the City.

C. *Police Reports:*
$5 for copies under 6 pages, 10¢ for each page thereafter. Extensive research, reproduction costs, etc. shall be charged in accordance with F.O.I.A. requests.

D. *Gun Registrations, Permits & Safety Inspections:*
No Charge

E. *Towing & Impound Fees:*
$100 for each vehicle towed as incidental to arrest or other civil custody. $100 for each vehicle towed as abandoned. The Chief of Police may, at his/her discretion, waive any towing fee when in his/her opinion, special circumstance exists. A report shall be filed when any such action is taken.

F. *Weddings:*
$25 per ceremony

G. *Fax Services:*

50¢ per page for the first 10 pages, then $.10 per page thereafter

H. *Notary Services:*
$5.00 per item

I. $25 each for any check returned unpaid for account insufficient, closed or stopped

16. Chapter 13 & 16: Development Plans, Administrative Fees, Subdivision Site Plan & Review Fees

A. Site Plan Review:

Single & Multiple-Family (non-plat)	$300 plus $5.00 per lot
Cluster Housing Development	$300 plus $5.00 per unit
Mobile Home Park	$400 plus $5.00 per unit
Commercial Development	$450 plus $50.00 per acre/fraction
Industrial Development	$400 plus $50.00 per acre/fraction
Office Development	$350 plus $50.00 per acre/fraction
Institutional	$300 plus $50.00 per acre/fraction
Public/semi-public uses	$300 plus $50.00 per acre/fraction
Special Approval or Conditional Use	$250 plus $5.00 per acre/fraction
PUD/Mixed Use Review	$500 plus $50.00 per acre/fraction Consulting
Fees (All Reviews)	Actual consultant costs
Revisions	½ of original review fee

B. Building and Zoning:

Swimming Pool Permit	$25
Zoning Permit	$25
Sidewalk Permit	$25
Sign Permit	See Building Permits
Structure Movement Permit	$95
Demolition Permit (Including ROW Permit)	$150
Right of Way Permit	$100
Home Occupation Permit	$95
Variance Review	$250 per variance
Lot Split/Combination: City Ordinance Section 16.2	$150 plus $5.00 per lot
Public or Private Road Plan Reviews	$400 per mile/fraction
Consulting Fees	Actual consultant costs
Zoning Code	$10 CD, $25 Paper Copy
Engineering Standards Manual	$10 CD, $25 Paper Copy

C. Subdivision Review

Preliminary Subdivision Review-Tentative	$300 plus $5.35 per lot
Preliminary Subdivision Review- Final	$160 plus $2.70 per lot
Final Plat Review	$160 plus $1.00 per lot

17. Chapter 1: Municipal Civil Infraction Fines

Civic Infraction Citation Fines:

First Offense	$100
Second Offense	$200
Third Offense	$300

Civic Infraction Notice Fines:

First Offense	$75
Second Offense	$150
Third Offense	$250

ADOPTION & REVISION HISTORY:

Resolution No. 050711-07	Dated July 11, 2005
Resolution No. 100208-06	Dated February 8, 2010
Resolution No. 101206-04	Dated December 6, 2010 (Water-Sewer-RTS)
Resolution No. 111114-05	Dated November 14, 2011 (Park Fees)
Resolution No. 110613-07	Dated June 13, 2011 (Water Fees)
Resolution No. 120611-05	Dated June 11, 2012 (Water Fees)
Resolution No. 120708-8A	Dated July 9, 2012 (Bulk Water Fees)

Discussion Took place.

YES: Shumaker, Abrams, Binder, Hicks, Hurt, Krueger.
NO: None. Motion Declared Carried.

Street Usage Permit, St. Pius X School

Resolution No. 120709-06 **(Carried)**

Motion by Councilmember Hurt
Second by Councilmember Binder

I Move the City of Swartz Creek approve the application for a street usage permit to conduct a 5 kilometer foot road race on Tuesday, July 31, 2012, 6:00 PM – 8:00 PM, applicant: the St Pius X School, in the care of Ms. Cathy VanCamp, race to be held in Winchester Village Subdivision, in accordance with the application submitted, under the direction and control of the Chief of Police.

Discussion Ensued.

YES: Shumaker, Abrams, Binder, Hicks, Hurt, Krueger.
NO: None. Motion Declared Carried.

MEETING OPENED TO THE PUBLIC:

Tommy Butler, 40 Somerset, spoke about having to pull over three times in the past week to let the police go by.

Jim Florence, 4296 Springbrook, spoke about impounded vehicles in the City lot and asked if they could be disposed of somehow. Mr. Florence talked about the clothing collection bins in the Kroger parking lot.

REMARKS BY COUNCILMEMBERS:

Councilmember Hicks asked Jim Florence to speak about the projects that the four men who received proclamations, along with other volunteers, have been doing in the City. Mr. Florence stated that the corner of Miller and Morrish Roads south have been cleaned, the City parking lot is going to be cleaned, the north fence line of Elms Park has been sprayed with week killer and more projects still to be decided.

Councilmember Binder asked if it was Consumer's Energy's obligation to take care of trees interfering with power lines or if it was the responsibility of the City.

Councilmember Hurt spoke about the Marathon project contracts.

Mayor Pro-Tem Krueger asked if Kroger stated that they never gave permission for the clothing bins to be placed in their parking lot. City Manager Bueche stated that the local store did state that. Mr. Krueger extended personal thanks to the gentlemen who did all of the work in the City.

Mayor Abrams invited the four gentlemen to the next council meeting being held at Elms Park and thanked them for all of the work that they did.

Adjournment

Resolution No. 120709-07 **(Carried)**

Motion by Councilmember Shumaker
Second by Mayor Pro-Tem Krueger

I Move the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 7:45 p.m.

YES: Unanimous Voice Vote.
NO: None. Motion Declared Carried.

Richard Abrams, Mayor **Juanita Aguilar, City Clerk**

From the desk of Fire Chief Brent Cole

DATE: July 16, 2012
TO: Fireboard Chairman
SUBJECT: Agenda Deletions, Changes, and/or Additions

Deletions: *none*

Changes/Updates:

VIII. GENERAL INFORMATION:

D. SOG updates and additions:

b. 213 Critical Incident Stress Debriefing (update recommendation from Attorney Cavanaugh) Clean Version with changes, click here

h. 601 POV Responses (update recommendation from Attorney Cavanaugh) Clean Version with changes, click here

GUIDELINE: #213

ADOPTED: June 24, 2012
REVIEWED: **July 13, 2012**
REVISED: **July 16, 2012**
SUBJECT: ADMINISTRATIVE GUIDELINES; Critical Incident Stress Debriefing (CISD)
PURPOSE: To establish guidelines for the utilization of Critical Incident Stress Debriefing and Management by Swartz Creek Area Fire Department (SCAFD) personnel that are exposed to critical incidents.
OBJECTIVE: To provide SCAFD personnel access to CISD when it is recognized they were exposed to a critical incident.

1. ~~Formal Critical Incident Stress Debriefings should occur 24 hours after an event for any emergency personnel involved in a stressful incident.~~ ***The Chief of the department should require formal critical stress debriefing after an event for any emergency personnel involved in a stressful incident. The Chief should initiated such debriefing within 24 hours of his discovery of such need.***
2. Critical Incident Stress Debriefing teams should be considered in the following situations:
   A. Pre-incident stress training for personnel interested.
   B. On-scene support for obviously distressed personnel.
   C. Individual consultants when only one to two personnel are affected by an incident.
   D. Defusing services immediately after an incident to assist crews in returning to service.
   E. Follow-up services to assure that personnel are recovering.
   F. Support during routine discussions of an incident by emergency personnel.
3. Instructions on and the use of CISD Teams at Disaster or Large Scale Incidents:
   A. CISD personnel should not go to a large-scale incident or a disaster unless they are requested by command staff.
   B. Only CISD team members with proper identification will be utilized.
   C. CISD Team members shall report to the command center upon arrival at the scene and they should wait for a briefing and specific instructions from command staff.
   D. CISD Team members have three major functions at the scene:
      I. They provide support to obviously distressed personnel.
      II. They advise command staff about stress-related or psychological matters.
      III. They assist victims of the event and their families until other appropriate resources arrive.
   E. If they are requested to enter an internal perimeter, they must do so under the accompaniment of emergency services personnel and they should be equipped with appropriate safety equipment.
   F. CISD Team member must never speak with media representatives at the scene without the consent of the command staff.
4. It is helpful from time to time to check on how people are doing by conducting periodic post incident stress evaluations of emergency personnel.

GUIDELINE: #213

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REVIEWED: July 13, 2012
REVISED: July 16, 2012
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4. It is helpful from time to time to check on how people are doing by conducting periodic post incident stress evaluations of emergency personnel.

GUIDELINE: #601

ADOPTED: January 26, 1992
REVIEWED: ~~06/08/12,~~ ***07/13/12***
REVISED: 06/22/92, 10/24/93, 04/22/96, 08/10/99, 01/14/04, 03/09/05, 06/08/12***, 07/16/12***

SUBJECT: COMMUNICATIONS/RESPONSE: Personal Vehicle (POV)/Response

PURPOSE: To establish specific guidelines for the use of emergency lights and siren (L&S) on personal vehicles (POV's) and direct response***.***

OBJECTIVE: To provide a detailed procedure describing how to request the use of lights and sirens on POV's, the responsibilities upon approval***,*** and continued requirements.

1. Department personnel are prohibited from having, and using, emergency lights and siren on their POV while on probation.
2. Department personnel***,*** including Officers***,*** must submit a written request for the use of emergency lights and siren to the Chief. Requests should state the reason why the use of emergency lights and siren will benefit the individual member and the SCAFD.
3. The Chief shall provide written approval or denial of the request.
4. Proof of insurance shall be provided with the initial request and annually, or on their renewal date thereafter. The proof of insurance certificate will be provided to the Fire Chief on or before the renewal date. Failure to provide a current proof of insurance certificate***, or notify the Fire Chief of insurance company changes,*** will automatically forfeit the person's direct response status and use of lights and siren. ***It is strictly prohibited to operate any personal own vehicle on fire department controlled property or for fire department responses without acceptable State of Michigan insurance coverage.***
5. The vehicle must pass SCAFD inspection and any inspections performed by the SCAFD thereafter. All POV's, with L&S and/or direct response status privileges shall be subjected to an annual inspection program by the Chief's designate. Inspections shall coincide with the month associated with the annual department driver training.
6. The POV shall maintain an appearance free from major rust and/or body damage. If such conditions occur, any physical evidence of lights and siren shall be removed from the POV at the discretion of the Chief.
7. Per the Motor Vehicle Code, Act 300: 257.698: Permissible additional lights: flashing, oscillating or rotating lights. (MSA 9.2398) (5)(D) When authorized by the Fire Chief, private motor vehicles owned by volunteer or paid firefighters, volunteer ambulance drivers or attendants may be equipped with flashing, rotating, or oscillating red lights for use when responding to an emergency call if when in use the flashing, rotating, or oscillating red lights are mounted on the roof section of the vehicle, either as a permanent installation or by means of suction cups or magnets and are clearly visible in a 360 degree arc from a distance of 500 feet when in use. A person shall not operating lights under this subsection, at any time other than when responding to an emergency.
8. Sirens shall be rated a minimum of sixty-five (65) watts.
9. The use of emergency lights and siren are only authorized when responding to SCAFD incidents.
10. Department personnel shall not use emergency lights and siren when responding from outside the SCAFD fire district.

11. Department personnel in their POV shall respond to their respective station in a Code 1 manner when:
    A. apparatus are to respond in a Code 1 manner per the Apparatus Response Schedule
    B. responding apparatus have been downgraded to a Code 1 response
12. While en route to the station department personnel in POV's equipped with emergency lights and siren shall:
    A. use lights and siren when appropriate
    B. on open road (dry, smooth, good visibility) POV's may only exceed the posted speed limit when deemed necessary while maintaining safe and adequate control of the vehicle at all times.
    C. actual vehicle speed is required by current conditions. Heavy traffic, rain, snow and fog will compromise vehicle control; therefore POV's shall not exceed the prima facia speed limits in inclement weather.
    D. stop at all negative right-of-way intersections (RR, stop signs, red traffic lights, etc.)
    E. do not proceed past a school bus that is operating its warning lights unless a divided highway allows such action by law.
13. All Firefighters with direct response status shall respond towards the fire station until such time as all the apparatus designated for response have done so.
14. Placement of POV's on scene shall be such that they do not interfere with apparatus placement.
15. Driving complaints, inappropriate driving, or unauthorized use of emergency lights and siren may result in disciplinary action including the removal of such emergency equipment.
16. Department personnel wishing to transfer emergency lights and siren to a different POV, or add emergency lights and siren to another POV, shall be required to resubmit in writing a request for emergency lights and siren to the Chief.
17. All personnel shall attend the annual SCAFD driver training to maintain lights and siren usage.

GUIDELINE: #601

ADOPTED: January 26, 1992
REVIEWED: 07/13/12
REVISED: 06/22/92, 10/24/93, 04/22/96, 08/10/99, 01/14/04, 03/09/05, 06/08/12***, 07/16/12***

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16. Department personnel wishing to transfer emergency lights and siren to a different POV, or add emergency lights and siren to another POV, shall be required to resubmit in writing a request for emergency lights and siren to the Chief.
17. All personnel shall attend the annual SCAFD driver training to maintain lights and siren usage.

DATE: JULY 16, 2012
TIME: 7:00 PM
LOCATION: STATION 1
SUBJECT: SWARTZ CREEK AREA FIRE AUTHORITY AGENDA

I. CALL TO ORDER
   A. PLEDGE OF ALLEGIANCE
   B. ROLL CALL
   C. ADDITIONS/CHANGES/DELETIONS AND AGENDA APPROVAL:
   D. SPECIAL PRESENTATIONS/ANNOUNCEMENTS:

II. APPROVAL OF MINUTES
   A. JUNE 18, 2012 MEETING:

III. CORRESPONDENCE:
   A. JUNE INCIDENT SUMMARY REPORT:

IV. PROFESSIONAL SERVICE REPORTS:
   A. JUNE FINANCIAL REPORT:

V. COMMITTEE REPORTS:
   A. BY-LAWS COMMITTEE - Chairman Rick Clolinger, Richard Derby, Bill Cavanaugh and Brent Cole:

   B. HEALTH AND SAFETY COMMITTEE: Chairman Rich Tesner (Members Chief Cole, Assistant Chief Merriam, Captain Tabit, and Lieut. Jones)

   C. PERSONNEL COMMITTEE: Chairman Ray Thornton, Richard Derby and David Hurt.

   D. FIRE AGREEMENT COMPLIANCY COMMITTEE: Chairman Dave Hurt, Richard Derby, Ray Thornton and Attorney Bill Cavanaugh.

VI. OLD BUSINESS:
   A. APPARATUS UPDATE from Battalion Chief Jack King-
      1. Apparatus status report attached

   B.

VII. NEW BUSINESS:

A. MEMBERS FOR PLACEMENT ON PROBATION: none
B. MEMBERS ELIGIBLE TO COME OFF PROBATION: none
C. MEMBERS RESIGNING/TERMINATING: none
D. MEMBERS ELIGIBLE FOR REINSTATEMENT:
   1. Todd Sherrill, who is certified Firefighter I & II and was previously with the SCAFD from 2003 to 2008, submitted his application to rejoin. He has passed his background check and physical and will be assigned to station 1.

      Chief Cole recommends Todd Sherrill be placed on 1 year probation with the SCAFD.

E. FEMA 2008 FUNDING AVAILABILITY: FEMA has advised there is $1,383.00 left over from the 2008 SCBA grant received that could be used for Fire Prevention materials. A formal request was submitted on June 19, 2012. No reply from FEMA, as of July 9, has been received approving the request. The Association was approached on June 24, and approved the 5% matching funding.

   Chief Cole requests permission to proceed with acquiring up to $1,383.00 from FEMA to pay for fire prevention materials and collect the 5% matching funding from the Swartz Creek Area Firefighters.

F.

G.

VIII. GENERAL INFORMATION:

A. MUNICIPAL BILLINGS for June
B. JUNE BILLS LIST
C. Flowers fund balance $40.00
D. SOG updates and additions:
   1. Table of Contents
   2. SOG List
      a. 203 Parade Activity (changed to only allow personnel and Explorers)
      b. 213 Critical Incident Stress Debriefing (new)
      c. 309 Hose Testing (news)
      d. 412 Pump Operator Responsibilities (added hear protection requirement)
      e. 516 Extrication (new)

f. 517 Power Lines (new)
g. 518 Gas Leaks (new)
h. 601 POV Responses (removed MSP registration responsibility and replaced with Fire Chief, also update speed dictated by road conditions.
I. 605 Multi-Casualty Incidents (new)

E. Chairman Mike Messer will not be able to attend the August 20 Fireboard meeting.

F.

IX. OPEN TO THE PUBLIC:

X. COMMENTS OF FIRE DEPARTMENT PERSONNEL (THROUGH THE CHIEF AND/OR HIS DESIGNATE:

XI. CHAIN OF COMMAND APPEAL TO THE FIRE AUTHORITY:

XII. COMMENTS FROM FIRE AUTHORITY MEMBERS:

XIII. MEETING ADJOURNMENT:

SWARTZ CREEK AREA FIRE DEPARTMENT

The regular meeting of the Swartz Creek Area Fire Board was held at Station #1, June 18, 2012. Chairman, Mike Messer, called the meeting to order at 7:00p.m.

I. CALL TO ORDER:

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Board Members Present:

- Chairman, Mike Messer
- City Representative, Boots Abrams
- Clayton Representative, Richard Derby
- City Representative, Dave Hurt
- City Representative, Rick Clolinger *arrived at 7:05*
- City Representative, Ray Thornton

Board Members Absent:

- Clayton Representative, Rich Tesner

Staff Present:

- Fire Chief, Brent Cole
- Attorney, Bill Cavanaugh
- Acct./Clerical, Kim Borse

Staff Absent:

- Assistant Chief Eric Merriam

Others Present:

- Batt. Chief Jack King
- FF Jeff Kelley
- Dick Abrams, City of Swartz Creek

C. AGENDA: ADDITIONS/CHANGES/DELETIONS:

- **Resolution 061812-01**
  Motion by Dave Hurt
  Second by Ray Thornton

The SCAFD Board does hereby approve the agenda and addition as presented.
YES: Abrams, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

D. SPECIAL PRESENTATION: NONE.

II. APPROVAL OF MINUTES

A. May 21, 2012 BOARD MEETING

- **Resolution 061812-02**
  Motion by Dave Hurt
  Second by Rick Derby

The SCAFD Board does hereby approve the minutes of May 21, 2012 board meeting, as presented.
YES: Abrams, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

III. CORRESPONDENCE:

A. MAY INCIDENT SUMMARY REPORT:

- **Resolution 061812-03**
  Motion by Rick Derby
  Second by Dave Hurt

The SCAFD Board does hereby accept the May 2012 Incident Summary, as presented
YES: Abrams, Clolinger, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

IV. PROFESSIONAL SERVICE REPORTS:

A. MAY FINANCIAL STATEMENT:

- **Resolution 061812-04**
  Motion by Rick Derby
  Second by Dave Hurt

The SCAFD Board does hereby approve the May 2012 financial statement, as presented
YES: Abrams, Clolinger, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

V. COMMITTEE REPORTS:

A. BY-LAWS COMMITTEE MEETING: NONE
B. HEALTH & SAFETY COMMITTEE: NONE
C. PERSONNEL COMMITTEE:
D. FIRE AGREEMENT COMPLIANCY COMMITTEE: NONE.

VI. OLD BUSINESS

A. *APPARATUS UPDATE:*
1. Monthly report from Batt. Chief King

VII. NEW BUSINESS

A. MEMBER(S) TO BE PLACED ON PROBATION: None
B. MEMBER TO COME OFF PROBATION: None
C. MEMBERS RESIGNING/TERMINATING: None
D. MEMBERS ELIGIBLE FOR REINSTATEMENT: None
E. ANNUAL PUMP MAINENANCE AND TESTING QUOTES:

- **Resolution 061812-05**
  Motion by Dave Hurt
  Second by Rick Clolinger

The SCAFD Board does hereby set aside Resolution 052112-11 and award contract to Circle K Service in the amount of $1,476.45.

YES: Abrams, Clolinger, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

F. HUNDRED CLUB GRANT APPROVAL:

- **Resolution 061812-06**
  Motion by Dave Hurt
  Second by Ray Thornton

The SCAFD Board does hereby approve accepting the Hundred Club Grant in the amount of $829.00 and the disbursement of $623.50 plus shipping for the purchase of 35 Bright Star Responder RA 4C 500305 lights.

YES: Abrams, Clolinger, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

G. SCBA/LIVE BURN TRAILERS FUNDING:

- **Resolution 061812-07**
  Motion by Boots Abrams
  Second by Dave Hurt

The SCAFD Board does hereby approve the payment of $550.oo to the Charter Township of Flint for the SCAFD portion of the matching funds for the SCBA/Live Fire Training Trailers.

YES: Abrams, Clolinger, Derby, Hurt, Thornton, Messer
NO: None Motion declared carried

VIII. GENERAL INFORMATION

A. MUNICIPAL BILLINGS
B. MAY BILLS LIST
C. FLOWERS FUND BALANCE IS $40.00
D. EMAIL FROM JOYCE LAY

IX. OPEN TO THE PUBLIC:

D. Abrams: Is the $550 coming from the training fund? Yes.

X. COMMENTS OF FIRE DEPARTMENT PERSONNEL, THROUGH THE CHIEF: NONE

XI. CHAIN OF COMMAND APPEAL TO THE FIRE BOARD: NONE

XII. COMMENTS OF THE FIREBOARD:

Derby: Thank you to Hundred Club and those that worked to acquire the grant.
Hurt: None.
Thornton: None
Abrams: SCAFD did a fantastic job during the flood.
Congratulations to Rick Clolinger and his varsity softball team
Clolinger: Was late to meeting due to the softball all-star game
Has 3 “All-State” players
Messer: Ditto.

XIII. ADJOURNMENT OF MEETING:

Meeting adjourned at 7:34 p.m. The next regular meeting will be 07/16/12 at Station 1 at 7:00 pm

MIKE MESSER
CHAIRMAN
SWARTZ CREEK AREA FIRE BOARD

KIM BORSE
ACCOUNTING/CLERICAL SPECIALIST
SWARTZ CREEK AREA FIRE DEPT.

SWARTZ CREEK AREA FIRE DEPT, SWARTZ CREEK MICHIGAN 48473

Incident Log for 06/01/2012 through 06/30/2012

Printed: 07/11/2012

Inc. No. - Exp. Date / Location / Involved Name	Disp. Time	Sta.	Incident Type / Owner Name	Prop & Cont Value	No. Resp / Prop & Cont Loss / Officer in Charge	Disp. to Enrte. Min.	Resp. Min. / Savings	Total Hr:Min:Sec
0000074-000 06/01/2012 In front of 5073 Mclain ST	03:29	1	444 Arching wires before arrival	$0	7 $0 KING, JACK L - BATT CHIEF	0.00	12.00 $0	0:51:00
0000075-000 06/01/2012 8230 Crapo ST	20:30	1	571 standby for fireworks	$0	14 $0 MERRIAM, ERIC M - ASSISTANT	0.00	30.00 $0	2:45:00
0000076-000 06/02/2012 9355 Weldon ST MR Aaron Trinkle	17:22	2	444 Power line down MR Aaron Trinkle	$0	12 $0 MERRIAM, ERIC M - ASSISTANT	0.00	8.00 $0	2:13:00
0000077-000 06/02/2012 5160 Winshall DR MS Tori Witter	18:15	1	444 Power line down MS Tori Witter	$0	8 $0 KING, JACK L - BATT CHIEF	0.00	7.00 $0	1:25:00
0000078-000 06/03/2012 5268 Winshall DR MR Marc Drenan	20:42	1	111 Microwave cord fire MR Marc Drenan	$0	19 $25,000 KING, JACK L - BATT CHIEF	0.00	9.00 $-25,000	1:48:00
0000079-000 06/04/2012 7404 Lennon RD MR Jeff Lavolette	09:14	1	531 Smoke invest; wood burner` MR Jeff Lavolette	$0	11 $0 MERRIAM, ERIC M - ASSISTANT	0.00	4.00 $0	0:16:00
0000080-000 06/07/2012 10171 W Hill RD	16:35	12	441 AMA to Gaines Twp	$0	17 $0 TABIT, STEPHEN D - CAPTAIN/EM	6.00	11.00 $0	0:35:00
0000081-000 06/09/2012 54 Somerset ST MS Peggy Allison	17:55	1	412 Gas leak (pilot light malfunc) MS Peggy Allison	$0	14 $0 KING, JACK L - BATT CHIEF	7.00	9.00 $0	0:34:00
0000082-000 06/09/2012 9210 Young ST MRS JULIE COOLINGHAM	20:46	1	631 Controlled burning (out on arrival) MRS JULIE COOLINGHAM	$0	18 $0 KING, JACK L - BATT CHIEF	5.00	7.00 $0	0:13:00
0000083-000 06/14/2012 8517 Lennon RD MR Mike Varner	19:44	1	151 Open burn, reported as Structure MR Mike Varner	$0	15 $0 KING, JACK L - BATT CHIEF	0.00	9.00 $0	0:41:00
0000084-000 06/15/2012 3013 Dartmouth ST	15:12	12	111 MA to Flint Twp	$0	10 $0	0.00	28.00 $0	1:42:00
0000085-000 06/15/2012 5370 Miller RD MR Sheena Manual	16:55	1	154 Dumpster fire	$0	15 $0 KING, JACK L - BATT CHIEF	0.00	7.00 $0	0:50:00
0000086-000 06/15/2012 2342 S Elms RD MR John Sweeten	18:52	2	733 Smoke detector activation due to MR John Sweeten	$0	11 $0 MERRIAM, ERIC M - ASSISTANT	0.00	10.00 $0	0:26:00

Incident Log for 06/01/2012 through 06/30/2012

Inc. No. - Exp. Date / Location / Involved Name	Disp. Time	Sta.	Incident Type / Owner Name	Prop & Cont Value	No. Resp / Prop & Cont Loss / Officer in Charge	Disp. to Enrte. Min.	Resp. Min. / Savings	Total Hr:Min:Sec
0000087-000 06/16/2012 1247 Beatrice ST	18:27	12 111	AMA to Flushing	$0	18 $0 Fitzpatrick, Robert M - SERGEANT	9.00	18.00 $0	0:56:00
0000088-000 06/17/2012 419 W Second ST	05:25	12 111	MA to City of Flint	$0	23 $0	0.00	19.00 $0	2:25:00
0000089-000 06/17/2012 1542 E Coutant ST MR Bernard Golmet	05:32	12 111	AMA to Flushing MR Bernard Golmet	$0	6 $0	0.00	10.00 $0	0:22:00
0000090-000 06/18/2012 In front of 5039 School ST	17:38	1 445	Wires/Trees arcing, taped off	$0	11 $0 TABIT, STEPHEN D - CAPTAIN/EM	9.00	11.00 $0	0:22:00
0000091-000 06/21/2012 4948-9 Schafer DR MRS Sherry Jones	17:05	1 531	Smoke Investigation MRS Sherry Jones	$0	12 $0 KING, JACK L - BATT CHIEF	0.00	11.00 $0	0:42:00
0000092-000 06/23/2012 9233 Chesterfield DR NANCY EARLEY	21:48	1 631	Athrzd cntrlld brn in container NANCY EARLEY	$0	15 $0 KING, JACK L - BATT CHIEF	8.00	10.00 $0	0:17:00

	No. Resp.	Total Hr:Min	Prop & Cont Value	Prop & Cont Loss	Savings	Incidents by Shift Including Exposures 0	1	2	3	4
Totals:	256	19:23:00	$0	$25,000	$-25,000	0	2	14	3	0

The total number of incidents, including exposure fires is 19.

The number of exposure fires is 0.

SWARTZ CREEK AREA FIRE DEPARTMENT
Income/Expense Report
For the Six Months Ending June 30, 2012

	Description	Current Mth	Y-T-D	Budget	Remain.Budget	% Budget
Revenues						
3582	OPERATING CONTRIBUTIONS	107,294.28	226,184.03	227,180.00	995.97	(1.00)
3583	EQUIPMENT CONTRIBUTIONS	0.00	0.00	36,190.00	36,190.00	0.00
3628	MISC. INCOME (SUNDRY)	11.00	17.00	0.00	(17.00)	0.00
3630	GRANT INCOME	0.00	4,850.00	0.00	(4,850.00)	0.00
3664	INVESTMENT INCOME	15.03	122.76	120.00	(2.76)	(1.02)
3673	SALE OF FIXED ASSETS	0.00	712.84	0.00	(712.84)	0.00
	Total Revenues	107,320.31	231,886.63	263,490.00	31,603.37	(0.88)
Expenses						
4703	SOCIAL SECURITY	757.68	3,889.45	10,600.00	6,710.55	0.37
4704	STAFF SALARIES	2,816.85	19,015.93	42,500.00	23,484.07	0.45
4705	MAIN/TRAIN-SALARIES	995.00	4,387.00	10,900.00	6,513.00	0.40
4706	OFFICER SALARIES	1,250.00	6,250.00	15,000.00	8,750.00	0.42
4707	FIREFIGHTERS SALARY	4,842.99	21,190.34	69,000.00	47,809.66	0.31
4708	DEFERRED COMPENSATION	289.25	1,187.50	3,200.00	2,012.50	0.37
4709	MEDICAL-FIREFIGHTERS	54.20	3,381.40	4,500.00	1,118.60	0.75
4710	UNEMPLOYMENT PAYMENTS	0.00	821.19	5,500.00	4,678.81	0.15
4727	OFFICE SUPPLIES	34.13	398.61	1,000.00	601.39	0.40
4728	BUILDING SUPPLIES	78.48	344.93	700.00	355.07	0.49
4740	OPERATING SUPPLIES	0.00	0.00	0.00	0.00	0.00
4741	EQUIPMENT SUPPLIES	643.54	3,071.76	8,000.00	4,928.24	0.38
4801	CONTRACT SERVICES	25.65	5,452.39	6,900.00	1,447.61	0.79
4820	80th Anniversary	0.00	0.00	0.00	0.00	0.00
4850	COMMUNICATIONS	245.97	1,385.33	4,100.00	2,714.67	0.34
4910	INSURANCE	0.00	22,952.00	22,000.00	(952.00)	1.04
4920	UTILITIES	620.31	4,895.34	17,000.00	12,104.66	0.29
4960	EDUCATION & TRAINING	838.75	1,049.26	6,400.00	5,350.74	0.16
4970	OFFICE EQUIPMENT	0.00	0.00	240.00	240.00	0.00
4976	FIRE EQUIPMENT	130.00	5,120.56	16,800.00	11,679.44	0.30
4978	FIRE EQUIP.-MAINT/REPAIR	120.00	8,167.65	17,650.00	9,482.35	0.46
4979	FIRE EQUIPMENT-UPGRADES	0.00	0.00	0.00	0.00	0.00
4981	APPARATUS	0.00	0.00	0.00	0.00	0.00
4982	Loose Equip. New Apparatus	0.00	0.00	0.00	0.00	0.00
4983	Misc. Upgrades	0.00	0.00	0.00	0.00	0.00
4984	COMPUTER EQUIPMENT	0.00	0.00	800.00	800.00	0.00
4988	COMPUTER SOFTWARE/UPGRADES	0.00	97.95	700.00	602.05	0.14
4999	RESERVE	0.00	0.00	0.00	0.00	0.00
	Total Expenses	13,742.80	113,058.59	263,490.00	150,431.41	0.43
	Net Income/<Loss>	93,577.51	118,828.04	0.00		
3400	FUND BALANCE-Beginning of Year	0.00	107,174.22	0.00		
	Fund Balance-End of Year	93,577.51	226,002.26	0.00		

AS OF: July 12, 2012
TO: Swartz Creek Area Fire Authority
RECORDED BY: Fire Chief Brent Cole
SUBJECT: Current Apparatus Readiness Status

Unit	Type	Assignment	Status
11	98 Pumper	Station 1	In service.

June 28: BC King replaced rubber seal on driver side inlet valve.
July 9: BC King reported the turn handle on the driver side intake is broken and needs replacement.
July 10: Apollo Fire Equipment advised the turn handle has been ordered.

12	91 Pumper	Station 1	In service.
16	91 Squad	Station 1	In service.
17	79 Grass Rig	Station 1	In service.
21	99 Pumper	Station 2	In service.
23	92 Tanker	Station 2	In service.
26	93 Squad	Station 2	In service.
27	79 Grass Rig	Station 2	In service.

SWARTZ CREEK AREA FIRE DEPARTMENT

8100 B CIVIC DRIVE
SWARTZ CREEK, MI 48473

Voice: 810/635-2300
Fax: 810/635-7461

INVOICE

Invoice Number: 2012SC07
Invoice Date: Jul 11, 2012
Page: 1

Duplicate

Bill To:
CITY OF SWARTZ CREEK 8083 CIVIC DRIVE SWARTZ CREEK, MI 48473

Ship to:
CITY OF SWARTZ CREEK 8083 CIVIC DRIVE SWARTZ CREEK, MI 48473

Customer ID	Customer PO	Payment Terms	
CITY01		Due at end of Month	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
	Courier		7/31/12

Quantity	Item	Description	Unit Price	Amount
297.50	FIRE02	FIRE SERVICE 06/2012	12.42	3,694.01

Subtotal	3,694.01
Sales Tax	
Total Invoice Amount	3,694.01
Payment/Credit Applied	
TOTAL	**3,694.01**

Check/Credit Memo No:

SWARTZ CREEK AREA FIRE DEPARTMENT

8100 B CIVIC DRIVE
SWARTZ CREEK, MI 48473

Voice: 810/635-2300
Fax: 810/635-7461

INVOICE

Invoice Number: 2012CT07
Invoice Date: Jul 11, 2012
Page: 1

Duplicate

Bill To:
CLAYTON TOWNSHIP 2011 MORRISH ROAD SWARTZ CREEK, MI 48473

Ship to:
CLAYTON TOWNSHIP 2011 MORRISH ROAD SWARTZ CREEK, MI 48473

Customer ID	Customer PO	Payment Terms	
CLAY01		Due at end of Month	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
	Courier		7/31/12

Quantity	Item	Description	Unit Price	Amount
174.00	FIRE02	FIRE SERVICE 06/2012	12.54	2,181.48

Subtotal	2,181.48
Sales Tax	
Total Invoice Amount	2,181.48
Payment/Credit Applied	
TOTAL	**2,181.48**

Check/Credit Memo No:

SWARTZ CREEK AREA FIRE DEPARTMENT
BILLS PAID LIST

					30-Jun-12
DATE:	**CHECKS**	**PAYEE:**	**AMT**	**ACCT**	**TRANSACTION DESCRIPTION**
6/4/2012	16068	BLUMERICHS	$120.00	4978	MINITOR V BATTERY PACK
			$10.00	4727	SHIPPING
6/4/2012	16069	BRADY'S BUSINESS SYSTEM	$25.65	4801	M/A-COPIER
6/4/2012	16070	CHARTER	$64.17	4850	PHONE STA 2
6/4/2012	16071	CLAYTON TWP	$40.51	4920	SEWER STA 2
6/4/2012	16072	GILL ROY'S	$13.57	4741	EQUIP SUPPLIES
			$13.08	4728	BUILDING SUPPLIES
6/4/2012	16073	VALLEY PETROLEUM	$302.68	4741	FUEL
6/11/2012	16074	DOUGLASS SAFETY	$130.00	4976	BOOTS
			$14.35	4727	SHIPPING
6/11/2012	16075	SCAFA	$341.00	22024	ASSOC. DUES
6/11/2012	16076	FRIEND OF THE COURT	$6.48	22026	FOC
6/11/2012	16077	ICMA	$588.75	22023	DF COMP EE PORTION
	(INTERNTL CITY/COUNTY MGT ASSOC.)		$289.25	4708	DF COMP ER PORTION
6/11/2012	16078	MCLAREN	$272.00	4709	PHYSICALS
6/11/2012	16079	VISA	$65.40	4728	PAPER PRODUCTS/BUILDING SUPPLIES
			$66.75	4960	SCAFF-MTG REFRESHMENTS
			$20.63	4741	LIGHT BULBS FOR TRUCKS
6/11/2012	16080	STATE OF MICHIGAN	$361.33	22022	STATE TAX
6/18/2012	16081	CITY OF SWARTZ CREEK	$363.14	4920	GAS/ELEC-STA 1
6/18/2012	16082	COMCAST	$181.80	4850	PHONE/INTERNET STA 1
6/18/2012	16083	CONSUMERS ENERGY	$216.66	4920	GAS/ELEC STA 2
6/18/2012	16084	MCLAREN	$32.00	4960	CPR CARDS
6/25/2012	16085	FLINT TWP	$550.00	4960	SCBA/LIVE TRAINING TRAILORS
6/25/2012	16086	DOUGLASS SAFETY	$190.00	4960	10 YR HELMET
			$9.78	4727	SHIPPING
6/25/2012	16087	ICMA	$70.00	22023	DF COMP EE PORTION
6/25/2012	16088	LOWES	$7.95	4741	EQUIP SUPPLIES
6/25/2012	16088	VALLEY PETROLEUM	$298.71	4741	FUEL
			($361.33)	22022	05/12 STATE TAX
			$2,046.51	22021	06/12 SOC SEC
			$302.81	22022	06/12 STATE TAX PAYABLE
			$6,312.97	1002	06/13 PAYROLL
			$994.00	1002	06/27 PAYROLL
			($217.80)	4709	USE OF FIT TEST EQUIPMENT
		TOTAL	$13,742.80		
VOID CHECKS:					

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GUIDELINE: #203

ADOPTED: October 23, 1988

REVIEWED: 06/12/12
REVISED: 04/10/92; 10/24/93; 09/30/96, 10/07/2002, 06/12/12

SUBJECT: ADMINISTRATIVE GUIDELINES; Parade/Activity Guidelines

PURPOSE: To establish guidelines for the use of department apparatus for parades or other activities

OBJECTIVE: To provide department personnel with specific guidelines for requesting department apparatus and/or equipment for parades or activities

1. The Swartz Creek Area Firefighters Association apparatus (41-57) should participate in parades before other department apparatus. Requests for other apparatus shall be considered.
2. Personnel must submit a verbal request to the Chief prior to the parade/activity stating which apparatus is requested, the date of the parade/activity, and the time frame the apparatus will be out of service, etc.
3. Approval or denial, which will be determined by the Chief, will be based on the ability of the department to provide adequate incident protection without the requested apparatus and the distance from the fire district to the parade/activity location.
4. Parade apparatus will be considered out of service until the apparatus is returned to its respective station. Parade/activity apparatus shall not respond to an alarm as an initial response apparatus. Response to any incident shall be at the discretion of the Incident Commander or a Chief Officer.
5 A minimum of two (2) SCAFD personnel should accompany and operate the parade/activity apparatus, and remain with the apparatus at all times.
6. In addtion to SCAFD personnel, only Explorers, may ride the apparatus provided they remain seated and belted at all times the apparatus is in motion.
7. Seat belts shall be worn at all times the apparatus is in motion.
8. Department personnel participating in parades/activities must be in uniform whenever possible or dressed appropriately.
9. Department personnel shall have their personal protective gear on the apparatus while participating in a parade/activity. During the parade, helmets do not have to be worn.
10. Non Firefighting personnel shall be responsible for their own transportation to and from the parade.
11. Any special riding arrangements (Santa Claus, etc.) must be approved by the Chief prior to the parade/activity.
12. When requested for a funeral, the apparatus used will be determined by the Chief and shall respond with a minimum of two (2) department personnel.
13. Driving of department apparatus shall be limited to those individuals who have attended the annual SCAFD driver-training course, unless approved by the Fire Chief.

GUIDELINE: #213

ADOPTED: June 24, 2012
REVIEWED:
REVISED:
SUBJECT: ADMINISTRATIVE GUIDELINES; Critical Incident Stress Debriefing (CISD)
PURPOSE: To establish guidelines for the utilization of Critical Incident Stress Debriefing and Management by Swartz Creek Area Fire Department (SCAFD) personnel that are exposed to critical incidents.
OBJECTIVE: To provide SCAFD personnel access to CISD when it is recognized they were exposed to a critical incident.

1. Formal Critical Incident Stress Debriefings should occur 24 hours after an event for any emergency personnel involved in a stressful incident.
2. Critical Incident Stress Debriefing teams should be considered in the following situations:
   A. Pre-incident stress training for personnel interested.
   B. On-scene support for obviously distressed personnel.
   C. Individual consultants when only one to two personnel are affected by an incident.
   D. Defusing services immediately after an incident to assist crews in returning to service.
   E. Follow-up services to assure that personnel are recovering.
   F. Support during routine discussions of an incident by emergency personnel.
3. Instructions on and the use of CISD Teams at Disaster or Large Scale Incidents:
   A. CISD personnel should not go to a large-scale incident or a disaster unless they are requested by command staff.
   B. Only CISD team members with proper identification will be utilized.
   C. CISD Team members shall report to the command center upon arrival at the scene and they should wait for a briefing and specific instructions from command staff.
   D. CISD Team members have three major functions at the scene:
      I. They provide support to obviously distressed personnel.
      II. They advise command staff about stress-related or psychological matters.
      III. They assist victims of the event and their families until other appropriate resources arrive.
   E. If they are requested to enter an internal perimeter, they must do so under the accompaniment of emergency services personnel and they should be equipped with appropriate safety equipment.
   F. CISD Team member must never speak with media representatives at the scene without the consent of the command staff.
4. It is helpful from time to time to check on how people are doing by conducting periodic post incident stress evaluations of emergency personnel.

GUIDELINE: #309

ADOPTED: June 24, 2012
REVIEWED:
REVISED:
SUBJECT: SAFETY PROCEDURE: Hose testing
PURPOSE: To provide a method of compliance with NFPA 1962 at the time of adoption.
OBJECTIVE: To provide a safe environment during hose testing and provide suitable hose for use.

1. Hose testing shall be conducted annually. Since there is a potential for injury due to hose failure during testing, it is vital that adequate safety precautions be taken. Refer to current NFPA 1962 Standard.
2. Physical Inspection:
   A. Hose should be inspected for any of the following conditions:
      Wear or tear, misuse or vandalism, debris, evidence of damage from mildew, chemicals, burns, cuts, abrasion and/or vermin.
   B. Couplings should be inspected for any of the following conditions:
      Damaged threads, corrosion, out-of-round, swivel not rotating freely, missing lugs, loose internal collar, defective or missing gaskets, other defects that impair operation.
   C. If the hose or couplings fail the physical inspection, the hose or couplings, shall be removed from service, repaired as necessary and service tested.
3. Service Testing
   A. All hose shall be service-tested while lying flat. A short length of smaller diameter hose with the same or higher proof pressure shall be used to connect the pressure source to the hose being tested.
   B. Each length of hose to be tested simultaneously shall be of the same service test pressure and, collectively, shall be considered the hose test layout. The total length of any hose line in the hose test layout to be service tested shall not exceed 300 ft. The hose test layout shall be straight, without kinks or twists. ***Exception:*** *Hose that has been repaired shall be tested one length at a time.*
   C. Each length of hose shall be service-tested using a hose testing machine.
   D. The hose test layout shall be connected to the hose test cap valve of the hose test machine. The hose test gate valve shall be used to prevent the reaction of discharging a large volume of water in the event of a hose bursting during the test.
   E. With the hose test gate valve open and the nozzle or test cap valve closed, the pressure shall be gradually raised to 45 psig +/- 5 psig. After the hose test layout is full of water, all air in each hose line shall be exhausted by raising the discharge end of each hose line above the highest point in the system. The nozzle or test cap valve shall be closed slowly, and then the hose test gate valve shall be closed. ***Warning:*** *Care shall be taken to remove all air from the hose before the nozzle or test cap is closed and the pressure raised. The development of test pressures introduces a serious accident potential if air remains in the system.*
   F. After filling to 45 psig +/-5, the hose shall be checked for leakage at the coupling and tightened with a spanner wrench where necessary. Each hose shall then be marked at the end or back of each coupling to determine, after the hose has been drained, if the coupling has slipped during the test.

G. All personnel other than persons required to perform the remainder of the procedure shall clear the area.
H. The pressure shall be raised slowly at a rate not greater than 100 psi per minute to the service test pressure, and held for 5 minutes.
I. While the test layout is at the service test pressure, the hose shall be inspected for leaks. If the inspecting personnel walk the test layout to inspect for leaks, they shall be at least 15 ft. to the side of the nearest hose line in the test layout. Personnel shall never stand in front of the free end of the hose, or straddle a hose in the test layout during the test.
J. If, during the test, a section of hose is leaking or a section bursts, the service test shall be terminated, and that length of hose shall have failed the test. The test layout shall be drained, and the defective hose removed from the test layout. The service test shall be restarted.
K. After 5 minutes at the service test pressure, the hose test machine shall be shut down, the pressure allowed to equalize with the source, the pump discharge gates closed, and each nozzle or test cap valve opened to drain the test layout.
L. The marks placed on the hose at the back of the couplings shall be observed for coupling slippage. If the coupling has slipped, the hose has failed the test.
M. Hose records shall be updated to indicate the results of the service test for each length of hose tested.
N. All hose failing the physical examination, bursting, leaking, or having couplings that fail because of slippage or leakage, shall be tagged, removed from service and repaired or discarded.

4. Booster and Hard Suction Hose:
   A. Booster hose shall be tested annually (in accordance with NFPA 1962) to 110 percent of its maximum working pressure. If a maximum working pressure cannot be determined for the hose, it shall be tested to 110 percent of the normal highest working pressure as used in the system.
   B. Hard suction hose shall be dry-vacuum tested annually as follows:
      I. The hose shall be attached to a suction source.
      II. The free end shall be sealed with a transparent disk and connected to an accurate vacuum measuring instrument.
      III. A 22-in. mercury vacuum shall be developed. While holding the vacuum for 10 minutes, the lining of the hose shall be inspected through the transparent disk. There shall be no collapsing of the lining into the waterway.
   C. If hard suction hose is used under positive pressure, it shall also be service-tested using the above procedure. See through hard suction not included.
5. Frequency of testing:
   A. Hose shall be inspected and service-tested as specified in NFPA 1962 before being placed in service for the first time and at least annually thereafter.

GUIDELINE: #412
ADOPTED: October 1, 1988
REVIEWED: 06/08/12
REVISED: 11/22/89, 12/31/96, 06/08/12
SUBJECT: PERSONNEL GUIDELINES; Pump Operator Responsibilities
PURPOSE: To establish guidelines for Pump Operators during emergency and non emergency situations.
OBJECTIVE: To provide a uniform means by which all Pump Operators, and drivers, during emergencies, can make reference to the responsibilities required of them as presented in three (3) sections: Emergency Functions, Non-Emergency Functions, and General Comments.

EMERGENCY FUNCTIONS:

1. When available those trained in pump operations shall drive and/or operate all department apparatus.
2. Pump operators will be responsible for personnel in the vehicle while driving to, and returning from, an incident scene (i.e. properly seated, seat belts fastened, and smoking items extinguished).
3. Pump operators will make sure the vehicles are back in service when returned and/or report any deficiencies to a department officer as soon as possible if the pump operator cannot remedy the deficiency.
4. When a non-trained pump operator drives and/or operates a vehicle, once a trained pump operator becomes available, that person will assume responsibility of the vehicle. It should be understood that driving should be left to those trained in pump operations.
5. All pump operators, while engaged in pump operations, or are in close proximity to the apparatus, shall wear ear protection connected to the designated portable radio for each apparatus.

NON-EMERGENCY FUNCTIONS:

1. The department maintenance supervisor, or his designate, shall be responsible for any scheduled checks of apparatus.
2. The supervisor shall appoint individuals, as deemed necessary, to insure all apparatus are checked as specified by the manufacturer.

GENERAL COMMENTS:

THIS SOG SHALL ACCOMPLISH THE FOLLOWING:

1. Help insure that all pump operators remain familiar with the operation and equipment on all the apparatus within the department instead of just the apparatus at their assigned station
2. Give all firefighters the opportunity to become familiar with the equipment and operation of all the apparatus
3. No one person should be expected to perform pump operations during incidents. In turn, it is the responsibility of each person to have a general working knowledge of the apparatus of the SCAFD.
4. All personnel will are required to become pump operator knowledgeable in the event it is necessary to accomplish the mission statement of the SCAFD.
5. Insure better upkeep, knowledge, and pride in all department apparatus.

GUIDELINE: #516

ADOPTED: 06/24/12
REVIEWED:
REVISED:
SUBJECT: FIREGROUND GUIDELINES: Extrication
PURPOSE: To promote safety for patients, personnel and safe removal of patients.
OBJECTIVE: To provide a detailed guideline pertaining to extrication safety and personnel management.

1. A unified command system shall be utilized for multi agency coordination.
2. Extrication decisions which affect the care and handling of the patient must be coordinated with, and approved by the Incident Commander.
3. The first arriving unit shall transmit an initial condition report and should request additional equipment and personnel if needed. Scene overview should include:
   A. Type of situation
   B. Any hazards noticeable
   C. Number of injured and severity (if possible)
   D. Number of trapped victims
4. Patient and personnel scene safety shall include the following:
   A. Patients shall be provided a level of protection necessary to provide a maximum level of safety.
   B. All personnel in the immediate area of extrication, when fire suppression is not needed, shall wear, along with their protective equipment, approved reflective vests. If time is paramount, reflective vests for personnel that will be performing direct extrication will not be required. All other personnel shall wear reflective vests.
   C. When fire suppression is required, reflective vests are not to be worn with SCBA.
5. Environment safety shall include the following:
   A. Whenever there is an obvious or suspected fire hazard, or whenever extrication equipment is operating in the vicinity of the patient or rescuers, fire suppression equipment shall be deployed.
   B. Deployed fire equipment shall include a charged hose line. If a charged hose line is not available, a type ABC fire extinguisher will be immediately accessible. If flammable liquids are present, the use of an AFFF portable extinguisher or AFFF charged hand line may be deployed.
   C. In cases of life threatening hazard, the Incident Commander shall have the authority to remove emergency personnel from the hazard area.
6. Fire prevention, suppression and hazard mitigation shall include the following:
   A. All electrical sources will be de-energized. (Must follow manufacturer guidelines for hybrid vehicles.)
   B. Flammable liquids and their vapors will be monitored.
   C. Hazardous material situations should be identified and can be mitigated up to the level of training.

7. Emergency vehicle placement and staging shall include the following:
   A. Apparatus arriving at the scene shall be positioned to provide a safe environment for those working at the scene. Apparatus shall be positioned in such a manner to block traffic from entering the scene, to allow easy access to emergency vehicles and shall not hinder emergency vehicles leaving.
   B. Non-committed emergency vehicles and personnel shall be assigned to a staging area as determined by the Incident Commander. A staging area will be established at a safe distance so as not to interfere with the incident area. All additional personnel arriving at the incident scene shall report to the Staging Officer.

GUIDELINE: #517

ADOPTED: 06/24/12
REVIEWED:
REVISED:
SUBJECT: FIREGROUND GUIDELINES: Power Lines and Electrical Equipment
PURPOSE: To establish specific guidelines for response and approach to the report of power lines down and all other hazards involving electrical equipment (transformers, electrical vaults, substations, etc.) for public safety and fire control.
OBJECTIVE: To provide guidelines for SCAFD personnel during power line and electrical equipment emergencies.

1. Upon arrival at the scene, the personal vehicles and apparatus shall be placed at a safe distance from the down line and all personnel shall remain seated until direction is given by the incident commander.
2. Only apparatus listed on the apparatus response schedule shall respond, unless circumstances require alternate apparatus.
3. It is the responsibility of the incident commander to maintain that level of safety until relieved.
4. The following items shall be considered by the Incident Commander:
   A. Request the utility company.
   B. Consider all down wires as energized. Utilize the Hot Stick to determine if the wires are energized.
   C. Place apparatus away from down power lines and utility poles.
   D. Place apparatus in a safe location away from overhead power lines.
   E. Locate both ends of the power line.
   F. Utilize barrier tape to identify the area of danger.
   G. Only remove or cut power lines that are known to NOT be energized unless a life safety threat is imminent.
5. The following iems shall be considered for responses to power lines on vehicles, not involving fire:
   A. Request the utility company.
   B. Place apparatus a safe distance away from the down lines.
   C. Do not touch the vehicle. Consider all down wires as energized. Utilize the Hot Stick to determine if the wires are energized.
   D. Have the occupant remain inside the vehicle. If ALL the wires are proven to NOT be energized, advise the occupant to vacate the vehicle.
   E. If occupants must leave the vehicle (due to fire or other threat to life), and the power lines are deemed energized, instruct them to open the door, but NOT to step out. They should jump free of the vehicle without touching the vehicle and the ground at the same time.

6. The following items shall be considered for responses to sub-station, transformer, electrical vault and manhole fires:
   A. Request the utility company.
   B. Clear the area.
   C. Be aware of explosion potential.
   D. Place apparatus in a safe location away from overhead power lines and not over manholes.
   E. Protect exposures.
   F. Do not make entry until electrical equipment has been de-energized.

NOTES REGARDING ELECTRICAL SAFETY:

Electricity always seeks its lowest level or ground. It will travel any path it can as it seeks a ground. A direct path to ground is when contact is made between something energized and a portion of your body such as your arm, hand, head or other body part. An indirect path to ground occurs when you are holding something or touching an object that is in contact with something energized. This could include tools or other equipment you may be holding, or when touching a fence, vehicle or other object.

Lock out of down power lines generally occurs after three (3) operations or attempts to re-energize. Even though you may hear this, do not assume the line is dead or de-energized. **Any down lines must always be considered energized with a potentially lethal current. (i.e. telephone, cable)**

Lines can reset and become energized again by manual operation of a switch, by automatic re-closing methods from a remote location, by induction (where a de-energized line can become energized if it's near another energized line or through back feed conditions).

Power lines tend to have "Reel Memory" and may curl back or roll on itself when down.

Use caution when spraying water around energized electrical equipment. Hose streams conduct current; never spray water directly onto energized power lines or equipment. For appropriate use of fog spray it must be applied at the base of the pole. Your primary responsibility is to protect the surrounding area.

GUIDELINE: #518

ADOPTED: 06/24/12
REVIEWED:
REVISED:
SUBJECT: FIREGROUND GUIDELINES: Gas Leaks or Odor of Gas
PURPOSE: To establish specific guidelines for response, approach and actions taken to the report of leaking or smell of gas.
OBJECTIVE: To provide guidelines for SCAFD personnel during gas leaks and gas odor emergencies.

1. Upon acknowledgment to Dispatch of the response, it shall be confirmed that the gas utility company has been notified. If Dispatch has not notified the gas utility company, a request will be made for them to do so immediately. In addition, wind speed and direction shall be obtained to determine a safe approach to the scene.
2. The arriving apparatus and personnel will stop at a safe distance from the incident location as determined by the Incident Commander.
3. A firefighter dressed in full turn-out gear will shut off the gas supply when appropriate.
4. Determination shall be made to ensure that all occupants are out of the structure.
5. All firefighters are to be in full turn-out gear including SCBA (masks not donned) and remain in the staging area.
6. Pre-connect attack lines will be pulled and prepared for charging and advancing if necessary.
7. If it is possible to initiate ventilation without entering the structure, the Incident Commander in charge may order this to be done. If positive pressure ventilation is to be utilized, the fan motor must be started at the engine and advanced to its proper location.
8. Personnel will remain in a defensive mode until arrival of the gas utility company. Any further action by the fire department will then be determined by the Incident Commander in charge.

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GUIDELINE: #601

ADOPTED: January 26, 1992

REVIEWED: 06/08/12
REVISED: 06/22/92, 10/24/93, 04/22/96, 08/10/99, 01/14/04, 03/09/05, 06/08/12

SUBJECT: COMMUNICATIONS/RESPONSE: Personal Vehicle (POV)/Response

PURPOSE: To establish specific guidelines for the use of emergency lights and siren (L&S) on personal vehicles (POV's) and direct response.

OBJECTIVE: To provide a detailed procedure describing how to request the use of lights and sirens on POV's, the responsibilities upon approval, and continued requirements.

1. Department personnel are prohibited from having, and using, emergency lights and siren on their POV while on probation.
2. Department personnel, including Officers, must submit a written request for the use of emergency lights and siren to the Chief. Requests should state the reason why the use of emergency lights and siren will benefit the individual member and the SCAFD.
3. The Chief shall provide written approval or denial of the request.
4. Proof of insurance shall be provided with the initial request and annually, or on their renewal date thereafter. The proof of insurance certificate will be provided to the Fire Chief on or before the renewal date. Failure to provide a current proof of insurance certificate will automatically forfeit the person's direct response status and use of lights and siren.
5. The vehicle must pass SCAFD inspection and any inspections performed by the SCAFD thereafter. All POV's, with L&S and/or direct response status privileges shall be subjected to an annual inspection program by the Chief's designate. Inspections shall coincide with the month associated with the annual department driver training.
6. The POV shall maintain an appearance free from major rust and/or body damage. If such conditions occur, any physical evidence of lights and siren shall be removed from the POV at the discretion of the Chief.
7. Per the Motor Vehicle Code, Act 300: 257.698: Permissible additional lights: flashing, oscillating or rotating lights. (MSA 9.2398) (5)(D) When authorized by the Fire Chief, private motor vehicles owned by volunteer or paid firefighters, volunteer ambulance drivers or attendants may be equipped with flashing, rotating, or oscillating red lights for use when responding to an emergency call if when in use the flashing, rotating, or oscillating red lights are mounted on the roof section of the vehicle, either as a permanent installation or by means of suction cups or magnets and are clearly visible in a 360 degree arc from a distance of 500 feet when in use. A person shall not operating lights under this subsection, at any time other than when responding to an emergency.
8. Sirens shall be rated a minimum of sixty-five (65) watts.
9. The use of emergency lights and siren are only authorized when responding to SCAFD incidents.
10. Department personnel shall not use emergency lights and siren when responding from outside the SCAFD fire district.

11. Department personnel in their POV shall respond to their respective station in a Code 1 manner when:
    A. apparatus are to respond in a Code 1 manner per the Apparatus Response Schedule
    B. responding apparatus have been downgraded to a Code 1 response
12. While en route to the station department personnel in POV's equipped with emergency lights and siren shall:
    A. use lights and siren when appropriate
    B. on open road (dry, smooth, good visibility) POV's may only exceed the posted speed limit when deemed necessary while maintaining safe and adequate control of the vehicle at all times.
    C. actual vehicle speed is required by current conditions. Heavy traffic, rain, snow and fog will compromise vehicle control; therefore POV's shall not exceed the prima facia speed limits in inclement weather.
    D. stop at all negative right-of-way intersections (RR, stop signs, red traffic lights, etc.)
    E. do not proceed past a school bus that is operating its warning lights unless a divided highway allows such action by law.
13. All Firefighters with direct response status shall respond towards the fire station until such time as all the apparatus designated for response have done so.
14. Placement of POV's on scene shall be such that they do not interfere with apparatus placement.
15. Driving complaints, inappropriate driving, or unauthorized use of emergency lights and siren may result in disciplinary action including the removal of such emergency equipment.
16. Department personnel wishing to transfer emergency lights and siren to a different POV, or add emergency lights and siren to another POV, shall be required to resubmit in writing a request for emergency lights and siren to the Chief.
17. All personnel shall attend the annual SCAFD driver training to maintain lights and siren usage.

GUIDELINE: #605

ADOPTED: June 24, 2012
REVIEWED:
REVISED:
SUBJECT: COMMUNCIATIONS/RESPONSE: Multi-Casualty Incidents
PURPOSE: To establish guidelines for personnel during multi-casualty incidents.
OBJECTIVE: To provide SCAFD personnel with guidelines to manage and notify other agencies to assist with handling a multi-casualty incident.

1. The SCAFD, as directed by the Genesee County Paramedic Supervisor on scene, shall operate under the State of Michigan protocol adopted by the Genesee County Medical Control Authority (GCMCA) Plan for Multi-Casualty Incidents (MCI).
2. In the event there are six (6) or more patients involved, Genesee County 911 will be advised of the situation by the Incident Commander, and recommend a County Sherriff Paramedic Supervisor be requested, if not already on scene, to activate the GCMCA Plan for MCI.
3. The Unified Incident Command System will be in place to facilitate communications between medical, police and fire personnel on scene.

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STATE OF MICHIGAN

IN THE GENESEE COUNTY CIRCUIT COURT

CITY OF SWARTZ CREEK,

Plaintiff,

Case No.

-vs-

SWARTZ CREEK VENTURES, L.L.C., a Michigan limited liability company, TCF NATIONAL BANK, a Michigan banking institution, MID-NITE VIDEO OF CLIO, INC., a Michigan corporation, P. SAROKI, INC., a Michigan corporation, D & A ENTERPRISES, INC., a Michigan corporation, LAYLA SAROKI, and TALMER BANK AND TRUST, a Michigan banking institution,

Defendants.

SIMEN, FIGURA & PARKER, P.L.C.
BY: MICHAEL J. GILDNER (P49732)
Attorney for Plaintiff
5206 Gateway Centre, Suite 200
Flint, Michigan 48507
(810) 235-9000

COMPLAINT TO QUIET TITLE

1. The City of Swartz Creek ("City") is a Michigan home rule city having its principal place of business in Genesee County, Michigan.

2. Swartz Creek Ventures, L.L.C. is a Michigan limited liability company doing business in Genesee County, State of Michigan.

3. TCF National Bank is a Michigan banking institution doing business in Genesee County, State of Michigan.

4. Mid-Nite Video of Clio, Inc. is a Michigan corporation, now dissolved, that

once did business in Genesee County, State of Michigan.

5. P. Saroki, Inc. is a Michigan corporation, now dissolved, that once did business in Genesee County, State of Michigan.

6. D & A Enterprises, Inc. is a Michigan corporation, now dissolved, that once did business in Genesee County, State of Michigan.

7. Layla Saroki was at all relevant times a resident of Genesee County, State of Michigan.

8. Talmer Bank and Trust is a Michigan banking institution doing business in Genesee County, State of Michigan.

9. The City seeks equitable relief pursuant to MCL 600.2932 to quiet title against Defendants regarding real property located in Genesee County, Michigan, commonly identified as 7026 Miller Road and legally described in Exhibit 1 that is attached hereto (the "Property").

General Allegations

10. A Marathon gas station once sat on the Property.

11. The gas station is no longer operational and the Property has sat vacant for many years now.

12. Defendants each claim some interest in the Property, as evidenced by the documents attached as Exhibit 1.

13. Taxes were not paid on the Property which caused the Genesee County Treasurer to seek foreclosure.

14. On December 22, 2010, the Genesee County Treasurer deeded the Property to the City following tax foreclosure, as evidenced by the Quit Claim Deed attached as Exhibit 2.

15. MCL 211.78k(5)©), which governs property tax foreclosures, says that "all liens against the property, including any lien for unpaid taxes or special assessments . . . are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section."

16. Defendants' interests in the Property precede the tax foreclosure; therefore, those interests became extinguished.

17. Having received title to the Property following tax foreclosure, the City has the only valid interest in it.

18. Nonetheless, prospective purchasers or their title agents have expressed some concern about the validity of Defendants' interests in the Property, necessitating this Complaint to Quiet Title.

For these reasons, the City of Swartz Creek requests the following:

A. Entry of Judgment determining that the City holds full legal and equitable title to the Property in fee simple absolute, free and clear of any and all claims of Defendants in this action and quieting title to the Property forever in the City's name;

B. Granting all other relief that is just and equitable under the circumstances.

SIMEN, FIGURA & PARKER, P.L.C.

BY: _____
Michael J. Gildner (P49732)
Attorney for Plaintiff
5206 Gateway Centre, Suite 200
Flint, Michigan 48507
(810) 235-9000

Date: July 18, 2012

CITY OF SWARTZ CREEK

WATER TOWER SITE LEASE AGREEMENT

Between

The City of Swartz Creek

And

Tri-County Wireless Inc

THIS WATER TOWER SITE LEASE AGREEMENT ("Lease"), is made this 1ST day of SEPTEMBER, 2007, between the City of Swartz Creek, a Michigan Municipal Corporation with principal offices at 8083 Civic Drive, Swartz Creek, Michigan 48473 ("City"), and Tri-County Wireless Inc, a Michigan Corporation with principal offices at 240 N. Fenway, Fenton, Michigan 48430 ("Tenant").

WHEREAS, the City is the owner of a water tower located south of Miller Road and west of Winston Drive, Tax Parcel I.D. No. 58-02-100-005, in the City ("Water Tower"); and

WHEREAS, the Tenant is in the business of providing wireless internet access and services to internet users; and

WHEREAS, the Tenant currently operates a wireless receiver on the Water Tower in order to provide wireless internet access and services to the area in and around the City; and

WHEREAS, the City previously subscribed to the Tenant for wireless services as an even exchange of value for the Tenant's occupancy of the water tower; and

WHEREAS, the City no longer utilizes wireless services and is desirous of renegotiating a market rent for occupancy of the water tower; and

WHEREAS, the City is desirous of leasing space on the Water Tower to permit the Tenant to continue to operate a wireless receiver thereon under the terms and conditions set forth in this lease.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Leased Premises**. The City hereby leases to the Tenant, for the term of this lease, and upon the terms and conditions set forth herein, the non-exclusive use of the top of the Water Tower upon which Tenant may place two (2) small wireless receivers, together with adequate space on the ground below the Water Tower in order to install and place a control box (approximately 3' x 3') thereon and also grants to Tenant reasonable access thereto for adequate utility services (the "Leased Premises").

2. **Term**. The initial term of this Lease Agreement shall commence on the date first written (the "Commencement Date") above and shall be for five (5) years, with an additional renewal term of five (5) years. Said renewal term shall commence automatically without further action on the part of the City or the Tenant, unless either party provides the other party with written notice that it does not intend to renew this Lease Agreement at least six (6) months before the expiration of the term.

3. Rent.

Tenant shall pay rent annually to the City at the rate of One Thousand Eight Hundred Dollars ($1,800.00) per year during the term of this Lease Agreement, or an amount equal to twenty percent (20%) of annual service fees collected from said tower, whichever is higher. Such rent shall be paid in advance on or before the Commencement Date and in equal installments monthly thereafter on or before the Commencement Date. Rent based upon service fees will be determined by the preceding year's receipts which Tenant shall provide the City upon written request at reasonable times, but no less than twice each year.

The rent to be paid by the Tenant for any renewal term of this Lease Agreement shall be that agreed to by the City and the Tenant at least six (6) months prior to the commencement of such renewal term.

Upon early termination of this agreement, the City agrees to refund a prorated share of the prepaid rent.

4. **Governmental Approval Contingency.**

a. The Tenant's right to use the Leased Premises is conditioned upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. The City shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

b. If any application necessary under Subparagraph 4(a) above is finally rejected or any certificate, permit, license, or approval issued to the Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority so that the Tenant will be unable to use the Leased Premises for its intended purposes, the Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to the City. Notice of the Tenant's exercise of its right to terminate shall be given to the City in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by the City as evidenced by the return receipt. Upon termination, pre-paid rent shall be pro rated with any and all remaining rent dollars returned to the Tenant. Except as required under Subparagraph 10(c) below, upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

5. **Tenant's Use.**

a. User Priority. Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use shall be subordinate accordingly:

1. The City;

2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not part of the City;

3. Other governmental agencies where use is not related to public safety; and

4. Government-regulated entities whose antenna offer a service to the general public for a fee, in a manner similar to a public utility, such as long distance and cellular telephone, not including radio or a service similar to that which the Tenant is legally authorized to provide. This use shall be non-exclusive, and the City specifically reserves the right to allow the Leased Premises to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Leased Premises.

(b) Purposes. Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating a wireless internet service receiver facility, and related equipment, including a control cabinet, and uses incidental thereto for providing wireless internet access and services which the Tenant is legally authorized to provide. This use shall be non-exclusive, and the City specifically reserves the right to allow the Leased Premises to be used by other parties and to make additions, deletions, or modifications to the Water Tower and its own facilities on the Leased Premises or on the property on which the Leased Premises is located.

(c) Operation. The Tenant shall have the right, at its sole cost and expense, to operate and maintain the wireless internet receiver and related equipment on the Leased Premises in accordance with good engineering practices and with all applicable FCC rules and regulations. The Tenant's installation of a wireless receiver and related equipment on the water Tower shall be done according to plans approved by the City, which approval shall not be unreasonably withheld. Any damage done to the Leased Premises or other City property during installation or during operations, shall be repaired at the Tenant's expense within 30 days after notification of said damage. The wireless internet receiver and related equipment installed by the Tenant shall remain the exclusive property of the Tenant.

(d) Maintenance Improvement Expense. All modifications to the Leased Premises and all improvements made for the Tenant's benefit shall be at the Tenant's expense and such improvements, including antenna, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the City's facilities on or adjacent to the Leased Premises. If Tenant's Antenna Facilities are mounted on the Water Tower they shall, at all times, be painted, at Tenant's expense, the same color as the Water Tower.

(e) Drawings. Tenant shall provide the City with as-built drawings of the equipment and improvements installed on the Leased Premises, which show the actual location of all the Tenant's wireless receivers and related equipment. Said drawings shall be accompanied by a complete and detailed inventory of all equipment and personal property placed on the Leased Premises.

(f) No Interference. The Tenant shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in a manner suitable to the City so as not to conflict with the use of the surrounding premises by the City. The Tenant shall not unreasonably interfere with the operations of

any prior tenant using the Water Tower and shall not interfere with the working use of the water storage facilities thereon or to be placed thereon by the City.

(g) Access. The Tenant, at all times during the term of this Lease Agreement, shall have access to the Leased Premises in order to install, operate, and maintain its wireless internet receiver and related equipment. The Tenant shall request access to the Water Tower twenty-four (24) hours in advance, and the City's approval thereof shall not be unreasonably withheld or delayed. In the event it is necessary for the Tenant to have access to the Water Tower at some time other than the normal working hours of the City, the City may charge the Tenant for whatever expense, including employees' wages, that the City may incur in providing such access to the Tenant.

6. **Additional Maintenance Expenses**. Upon notice from the City, the Tenant shall promptly pay to the City any additional City expenses incurred in maintaining the Leased Premises, including painting or other maintenance of the Water Tower, which is made necessary by the Tenant's occupancy of the Leased Premises.

7. **Advances in Technology**. As technology advances and improved receivers are developed which are routinely used in the Tenant's business, the City may require, in its sole discretion, the replacement of existing receivers with the improved receivers if the new receivers are more aesthetically pleasing or otherwise foster a public purpose, as long as the installation and use of the improved receivers are practical and technically feasible at this location.

8. **Insurance and Indemnification**.

(a) The Tenant shall, during the term of this Lease Agreement, maintain property damage insurance coverage on all personal property and fixtures owned by the Tenant. The Tenant acknowledges that the City is not responsible for insuring against the loss of the Tenant's equipment improvements. The Tenant shall also maintain single limit or combined limit general liability insurance policy of an amount not less than one-million dollars ($1,000,000) individual and two-million ($2,000,000) aggregate for property damage arising from one occurrence or for bodily or personal injuries or death or damages arising from one occurrence.

(b) The Tenant shall hold the City and its agents, officers, employees, elected officials, contractors, heirs, and assignees harmless from and indemnify the City against any and all liability, damage, loss and expense (including attorneys fees) for damages to persons or property arising or resulting from the acts or omissions or caused by the Tenant or the Tenant's employees, servants, agents, guests, assigns, subtenants, visitors or licensees, in, upon or about the Leased Premises, the Water Tower or the adjacent areas, including all common areas.

9. **Damage or Destruction**. If the Leased Premises are damaged or destroyed by fire, winds, flood or other natural or manmade causes, the City shall have the option to repair or replace the Leased Premises at its sole expense, or to terminate this Lease effective on the date of such damage or destruction. In the event the City terminates this Lease, neither the Tenant nor the City shall have any further obligations hereunder. If the City elects to repair or replace the Leased Premises, until such repair or replacement is

completed so that the Tenant can resume full operations, the Tenant's rental hereunder shall abate until the Leased Premises are restored to a condition that the Tenant can resume full operations.

10. **Lease Termination**.

(a) Events of Termination. Except as otherwise provided herein, this Lease may be terminated upon sixty (60) days written notice to the other party as follows:

(i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);

(ii) by the Tenant for cause if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the wireless internet services.

(iii) by the City, upon 120 day's prior written notice to the Tenant if the City decides, for any reason, to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by Tenant and/or removal and/or discontinued use of the Water Tower for all purposes;

(v) by the City if it determines that the Water Tower is structurally unsound, including, but not limited to, consideration of age of the Water Tower, damage or destruction of all or part of the Water Tower on the Leased Premises from any source, or factors relating to condition of the Leased Premises;

(vi) by the City if it determines that a potential user with a higher priority under Subparagraph 5(a) above cannot find another adequate location, or the Tenant's wireless receiver(s) or related equipment unreasonably interferes with another user with a higher priority; or

(vii) by the City if it determines that the Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to government approvals granted thereunder, after a public hearing before the City Council

(b) Notice of Termination. The parties shall give Notice of Termination in writing by certified mail, return receipt requested. Such Notice shall be effective upon receipt as evidenced by the return receipt, or such later date as stated in the Notice. All rentals paid for the Lease Agreement prior to said termination date shall be retained by The City.

(c) Site Restoration. If this Lease is terminated or not renewed, the Tenant shall have 60 days from the termination or expiration date to remove its wireless receivers and related equipment from the Leased Premises, repair the site and restore the surface of the Water Tower. If the Tenant's wireless receivers and related equipment are not removed to the reasonable satisfaction of the City, they shall be deemed

abandoned and become the property of the City and the Tenant shall have no further rights thereto.

11. **Tenant Interference**.

(a) With Water Tower. The Tenant shall not interfere with the City's use of the Water Tower and agrees to cease all such actions which unreasonably and materially interfere with the City's use thereof no later than three business days after receipt of written notice of the interference from the City. If the Tenant's cessation of action is material to Tenant's use of the Leased Premises and such cessation frustrates Tenant's use of the Leased Premises, within Tenant's sole discretion, Tenant shall have the immediate right to terminate this Lease.

(b) With Higher Priority Users. If the Tenant's wireless receivers or related equipment cause impermissible interference with higher priority users as set forth in Subparagraph 5(a) above or with pre-existing tenants, the Tenant shall take any action necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receiving the City's written notice of same, the Tenant shall immediately cease operating its wireless receivers or related equipment and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated. If the interference cannot be eliminated within 30 days after the Tenant received the City's written notice, the City may at its option terminate this Lease immediately.

(c) Interference Study - New Occupants. Upon written notice by the City that it has a bona fide request from any other party to lease an area including or in close proximity to the Leased Premises ("Leased Premises Area"), Tenant agrees to provide the City, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by Tenant on the Leased Premises at the time of such request. The City may then have an independent, registered professional engineer of the City's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to the Tenant. The City shall require the new applicant to pay for such interference studies, unless the City or other higher priority user requests the use. In that event, the Tenant and all other tenants occupying the Leased Premises Area shall pay for the necessary interference studies, pro rata.

(d) Interference - New Occupants. The City agrees that it will not grant a future lease in the Leased Premises Area to any party who is of equal or lower priority to the Tenant, if such party's use is reasonably anticipated to interfere with the Tenant's operation of its Antenna Facilities. The City agrees further that any future lease of the Leased Premises Area will prohibit a user of equal or lower priority from interfering with the Tenant's Antenna Facilities. The City agrees that it will require any subsequent occupants of the Leased Premises Area of equal or lower priority to the Tenant to provide the Tenant these same assurances against interference.

12. **Assignment**. This Lease may not be sold, assigned, or transferred by Tenant without the written consent of the City, such consent not to be unreasonably withheld.

13. **Miscellaneous Provisions**.

(a) The City warrants that it has full right, power, and authority to execute this agreement. The City covenants that the Tenant, in return for paying rent and complying with the terms of this Lease Agreement, shall and may peacefully and quietly have, hold, and enjoy the leased property.

(b) The provisions of this Lease shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns.

(c) This Lease contains the entire agreement of the parties with respect to any matter mentioned herein and supersedes any prior oral or written agreements.

(d) This Lease may be amended in writing only, signed by the parties in interest at the time of such amendment.

(e) No waiver by either party of any provision hereof shall be deemed a waiver of any other provision or of any prior or subsequent breach or any provision hereof.

(f) If any term or provision of this Lease Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not be construed to affect any other provision of this Lease Agreement, and the remaining provision shall be enforceable in accordance with their terms.

(i) This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

(j) If the Tenant does not promptly vacate the premises at the end of the Lease term, such holding over shall be treated as creating a month to month tenancy.

IN WITNESS WHEREOF, the parties have executed this Lease agreement as of the day and year first written above.

CITY OF SWARTZ CREEK

By: _____
Richard B. Abrams, Mayor

By: _____
Juanita Aguilar, City Clerk

TRI-COUNTY WIRELESS INC.

By: _____
Its: Chief Executive Officer

By: _____
Its: Account Executive

Approved as to Form:

_____
Richard J. Figura, City Attorney
Dated: 9-1-, 2007

Proposal

C & H Construction Co., Inc.
9215 Grand Blanc Road
GAINES, MICHIGAN 48436
(810) 635-9411
FAX (810) 635-4118

ATTN THOMAS SURCEK FAX 810 635-2887

PROPOSAL SUBMITTED TO: CITY OF SWARTZ CREEK, DPW	PHONE: 810 635-4464	DATE: JULY 3, 2012
STREET: 8083 CIVIC DRIVE	JOB NAME: SLOPE STABILIZATION SOLUTIONS	
CITY, STATE and ZIP CODE: SWARTZ CREEK, MICHIGAN 48473	JOB LOCATION: MORRISH ROAD AND I69 EXPRESSWAY WEST SIDE OF ROAD AT BRIDGE.	
ARCHITECT: PER CITY	DATE OF PLANS: 6/27/2012	JOB PHONE: 810 635-4464

We Propose hereby to furnish material and labor — complete in accordance with specifications below, for the sum of:

Payment to be made as follows: _____ dollars ($ _____).

EROSION CONTROL FOR AREA SIZE AS FOLLOWS 350' LW. FT. BY 45' FT. SIDE SLOPE = 15,750 SQ FT.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature Michael Casto up.

Note: This proposal may be withdrawn by us if not accepted within 90 days.

We hereby submit specifications and estimates for:

ALL WORK AS LISTED FOR THREE SOLUTIONS TO THE SIDE SLOPE PROBLEM ALONG THE WEST SIDE OF MORRISH ROAD AT I69 EXPRESSWAY OVERPASS.

DESCRIPTION IS AS FOLLOWS

1.) SOLUTION NO. 1. GABION BASKETS MATERIAL, GALVANIZED BASKET 6' BY 3' BY 1.50 FILLED WITH 1" BY 3" LIMESTONE.

TOTAL → $ 117,650.00

2.) SOLUTION NO. 2. GEOWEB SOIL STABILIZATION WITH 2NSA LIMESTONE W/ 4" TOP SOIL W/ SEEDING AND MULCH.

TOTAL → $ 88,720.00

3.) SOLUTION NO. 3. RELOCATE EXISTING SWALE AT BOTTOM OF SLOPE WEST 40' FEET AND ADD CLAY FILL TO SIDE SLOPE TO CHANGE ANGLE TO A LESS DEGREE OF SLOPE.

MATERIAL NEEDED 8,000 YARDS OF CLAY FILL
450 YARDS OF TOP SOIL
SEEDING AND MULCH ALL DISTURBED AREAS.

TOTAL → $ 62,890.00

NOTE: ALL SOLUTIONS INCLUDE TRAFFIC CONTROL AND RESTORATION.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance: _____

Signature _____

CSIGeoturf®

Scott Czewski, P.E.
Project Consultant

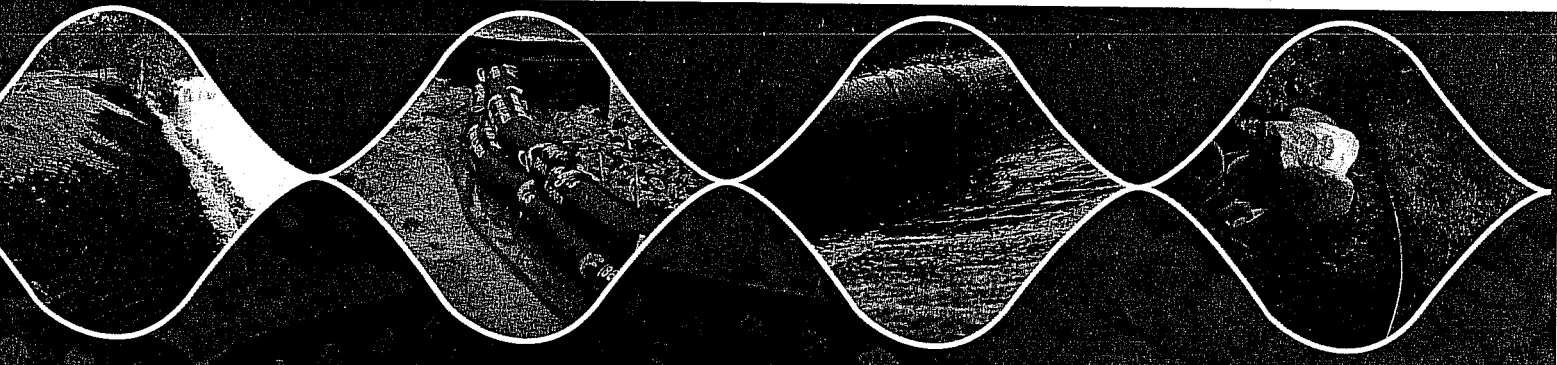
1500 Alloy Parkway
P.O. Box 668
Highland, MI 48357

Office: 248-887-6767
Fax: 248-887-0855
Cell: 517-348-8450

sczewski@geoturf.com
www.geoturf.com
1-800-621-7007

2012
WHOLESALE CATALOG

csiGeoturf®



- Civil Site Improvement
- Erosion & Sediment Control
- Stormwater Management
- Landscape Enhancements

MACCAFERRI
Environmental solutions

Gabion Baskets

Gabions are used for the construction of retaining structures in all environments and climates. They are rectangular cages made of hexagonal woven steel wire mesh laced together and filled with stone. Gabions are characterized by being monalithic or continuosly built, flexible, permeable, easy to construct, and extremely cost effective.

– Comes in galvanized or PVC coated
– Mesh size is 3¼" × 4"

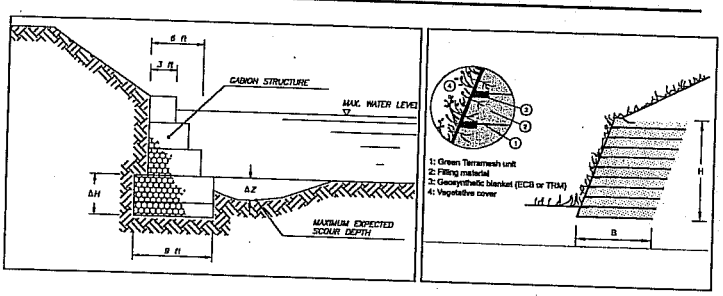
SIZE (L × W × H)	CAPACITY (CUBIC YDS.)	TOTAL FACE FT. PER UNIT
6' × 3' × 3'	2	18
9' × 3' × 3'	3	27
12' × 3' × 3'	4	36
6' × 3' × 1.5'	1	9
9' × 3' × 1.5'	1½	13½
12' × 3' × 1.5'	2	18
6' × 3' × 1'	.66	6
9' × 3' × 1'	1	9
12' 3' × 1'	1.33	12

Reno Mattresses

Reno mattresses are used for river bank and scour protection, channel linings for erosion control, and embankment stability. They are filled with rock at the project site to form flexible, permeable, monolithic structures to promote rapid growth of natural vegetation. All the physical and mechanical properties of Maccaferri Reno mattresses meet or exceed the requirements of ASTM A975-97.

– Comes in galvanized or PVC coated
– Mesh size is 2½" × 3½"

SIZE (L × W × H)	CAPACITY (CUBIC YDS.)	TOTAL FACE FT. PER UNIT
9' × 6' × 6"	1	54
12' × 6' × 6"	1.33	72
9' × 6' × 9"	1½	54
12' × 6' × 9"	2	72



Green Gabions

Green Gabion is a structural product used for soil and stream bank stabilization, restoration and erosion mitigation solutions. It is specifically designed for use with soil bioengineering techniques such as live staking, brush layering and rooted plants, to create permanent, vegetating, armored systems. Green Gabions should be filled with a mix of stone and topsoil to create environmental conditions for plant colonization and establishment.

– Lined with a 100% coconut (coir) blanket inside
– Comes in galvanized or PVC coated
– Mesh size is 3½" × 4"

SIZE (L × W × H)	CAPACITY (CUBIC YDS.)	TOTAL FACE FT. APPROX. SQ. FT.
6½' × 3.28' × 1.64"	1.3 at 45 degree	12
6½' × 3.28' × 1.64"	1.3 at 60 degree	14

Terramesh

The Terramesh system is an environmentally friendly modular system used for soil reinforcement such as mechanically stabilized embankments. Terramesh units are similar to standard gabion baskets and provide similar benefits, but add a longer base panel that extends back into the slope to provide reinforcement and stabilization. A green structure can be achieved by hydroseeding or live planting.

Maccaferri Terramesh Sizes

– PVC Coated Wire Mesh

SIZE (L × W × H)	CAPACITY (CUBIC YDS.)	TOTAL FACE FT. PER UNIT
9' × 6' × 1.5' / 3'	1 / 2	9 / 18
12' × 6' ×1.5' / 3'	1 / 2	9 / 18
15' × 6' × 1.5' / 3'	1 / 2	9 / 18
18' × 6' × 1.5' / 3'	1 / 2	9 / 18

Maccaferri Green Terramesh

Additionally, Green Terramesh features a geosynthetic three-dimensional geomat (Green Terramesh® "Water" type) or a biodegradable 100% coconut fiber biomat (Green Terramesh "Soil" type) attached to the inside facing. This facing retains the backfill and permits a vegetative cover to establish rapidly. They also feature pre-formed steel brackets to maintain a pre-formed facing slope angle. All Terramesh units are supplied in standard lengths, requiring minimal field adjustments.

Maccaferri Green Terramesh Sizes

– PVC Coated Wire Mesh

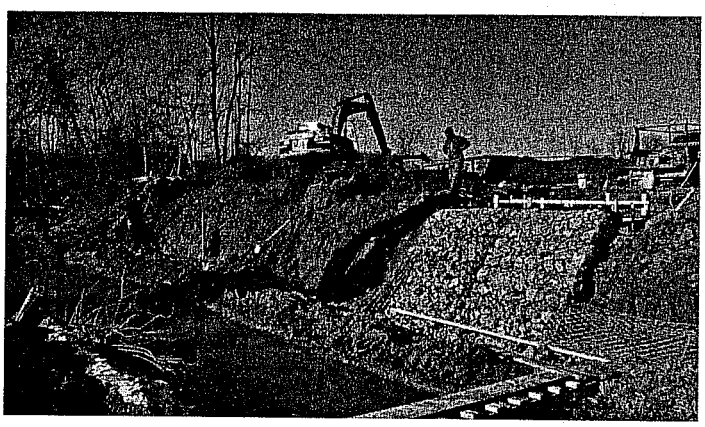
SIZE	SLOPE ANGLE	TOTAL FACE FT. PER UNIT
9.8 × 6.5 × 1.4 / 1.8	60° or 70°	9.1 / 11.7
13.1 × 6.5 × 1.4 / 1.8	60° or 70°	9.1 / 11.7
16.1 × 6.5 × 1.4 / 1.8	60° or 70°	9.1 / 11.7
19.7 × 6.5 × 1.4 / 1.8	60° or 70°	9.1 / 11.7

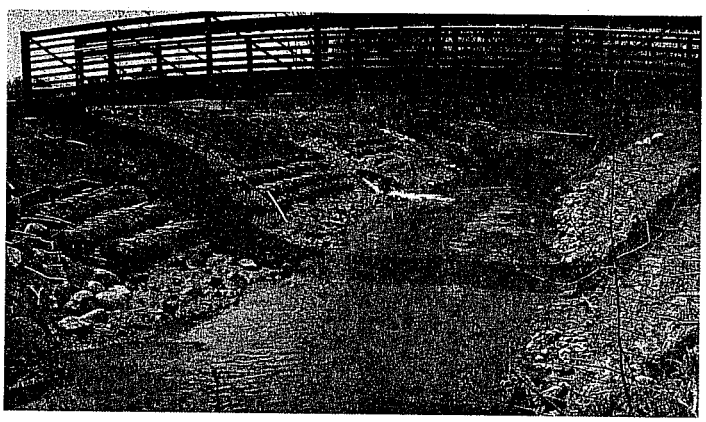
SLOPE EROSION CONTROL: GABIONS, LIVE STAKES

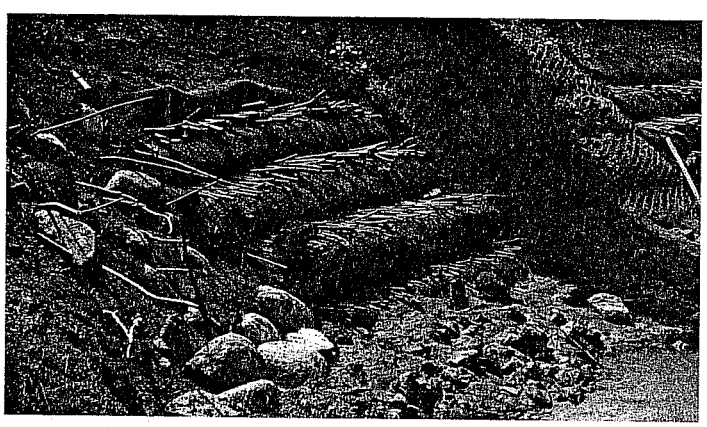
Flodin Park in Canton Township was in dire need of improvements from the park and sport area to the natural area. Fellows Creek flows through the park neatly separating the park area from the natural area and Fellows Creek was also in dire need of stream bank repairs. The most critical creek area in need of improvements was the 100 feet of stream bank on either side of the creek crossing bridge.

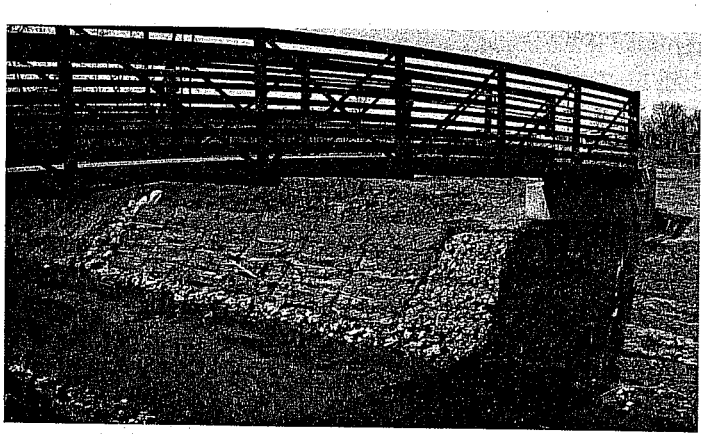
Smith Group in conjunction with Canton Township designed a solution including a new bridge with hard armor soil erosion protection. The hard armour protection was supplied by Maccaferri Gabions. Two types of gabions were included on the project. On the inside curve of the creek, typical rectangular gabions were used in conjunction with Green gabions. Green Gabions were used exclusively on the outside curve of the creek.

The Green gabion structure is similar to typical rectangular gabions, except that the front panel is cut and folded to provide a front panel on a 45 degree angle. The angle provides a smoother wall as well as a much more natural looking slope. In addition, the inside of the front panels of Green gabions (except for under the bridge itself) are lined with a coconut erosion control blanket. The blanket allows for the use of a soil, gravel mixture instead of rock. The soil, gravel mixture then provides a base for vegetation. In particular, live stakes were used extensively throughout the slope area. Live stakes, a bioengineered concept, were used extensively throughout the slope area and vegetated the green gabion structures.



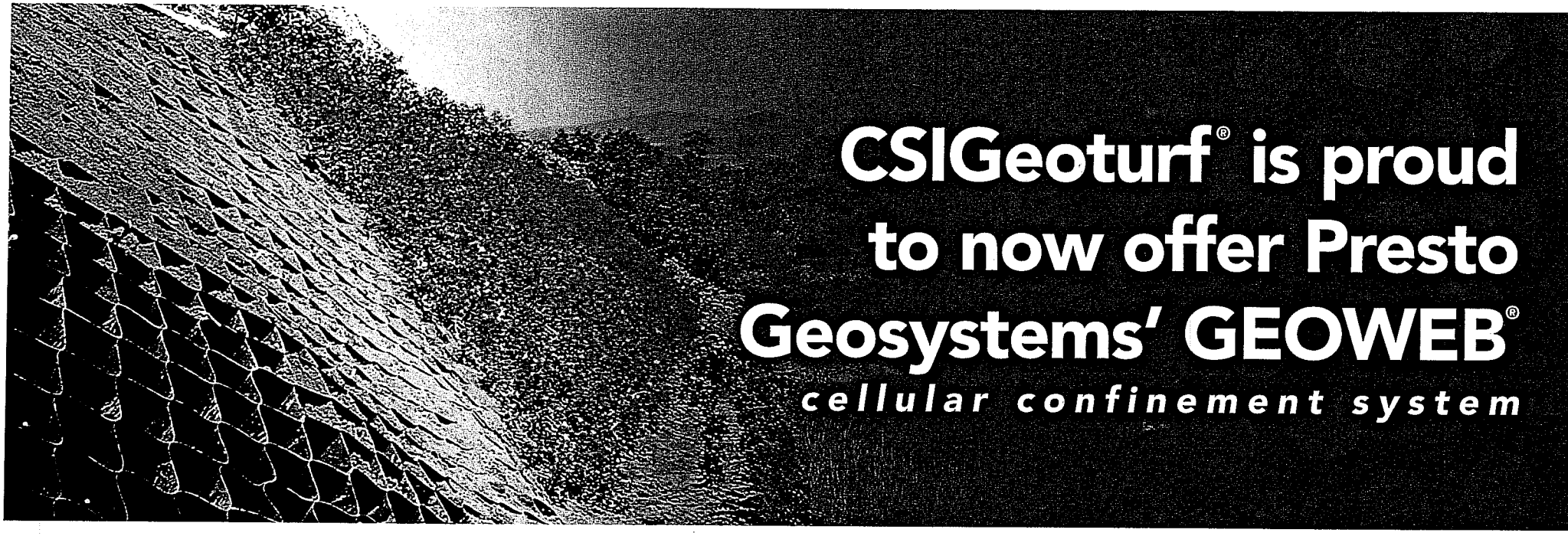






PROJECT REPORT

Name:	Fellows Creek Wetland Nature Trail
Location:	Canton, MI
Product:	Maccaferri Gabions, live stakes
Contractor:	DeAngelis Construction
Owner:	Canton Township
Engineer:	Smith Group



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cellular confinement system

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Down to Earth Solutions

GEOSYSTEMS

solving challenging soil stabilization problems

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MADE IN THE USA

For the most advanced soil stabilization technology today, rely on the proven Presto Geosystems' GEOWEB® cellular confinement system for solving challenging soil stability problems.

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THE ORIGINAL CELLULAR CONFINEMENT SYSTEM

Presto Geosystems is the original developer of the geocell technology and leads the industry in research and development. The result is meaningful product improvements, innovative features, advanced engineering methodologies and proven field results that provide the most cost-effective and long-term solutions to soil stabilization problems. Innovations continue today to provide you with sustainable, high-performing and lowest-cost solutions.

GEOWEB® KEY APPLICATIONS

Load Support • Slope Protection • Shoreline Protection
Channel Protection • Erosion Control • Vegetated Retaining Walls

GEOWEB® sections are available in various cell types and depths, and section lengths to most economically meet project requirements.

CSIGeoturf®

Down to Earth Solutions

Contact a CSIGeoturf representative today at 800-621-7007 to learn more about GEOWEB® and the many other Geosystems products we now offer.

www.geoturf.com

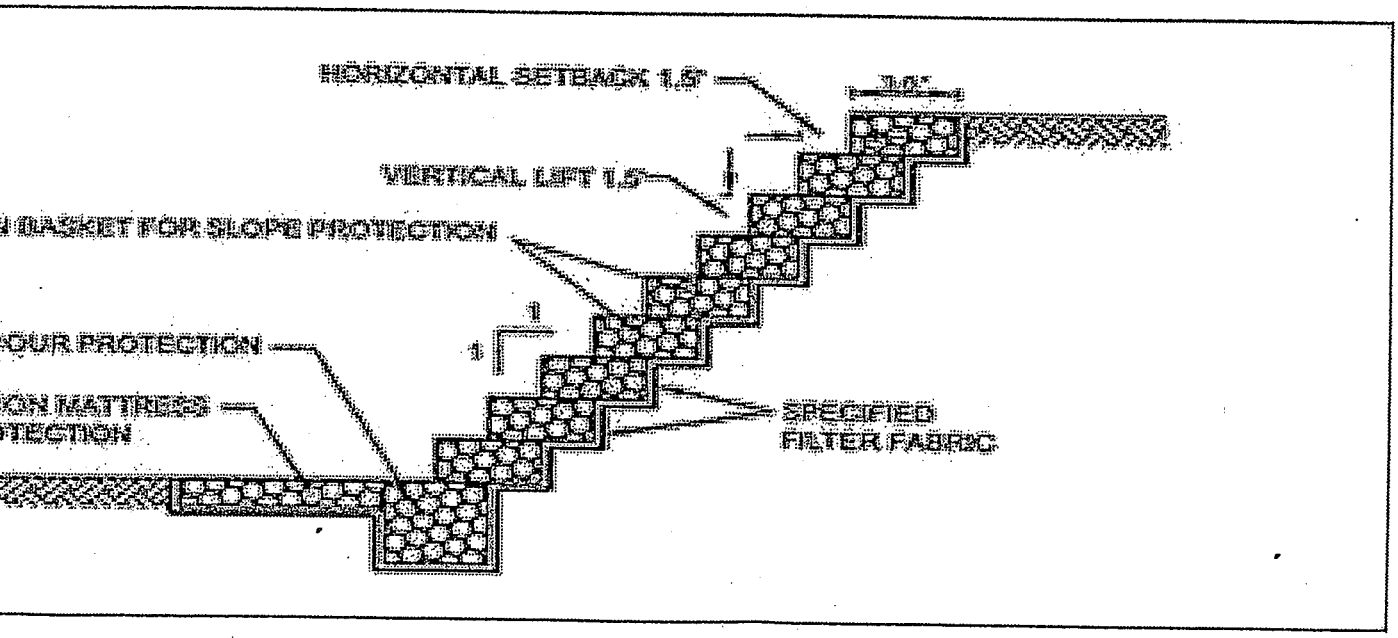
OVER 1/69 AT MORRISH RD

PLAN DATE 6/25/2021

CITY OF SWARTZ CREEK, DPW

365' LIN FT. LONG

45' ANGLE SLOPE TOP TO BOTTOM



Paul Bueche

From: Don Korth [dkorth@comcast.net]
Sent: Tuesday, July 17, 2012 7:25 AM
To: 'Juanita Aguilar'; 'Paul Bueche'
Subject: Webmail

Webmail is once again working on the city's new webserver and can be accessed at;

http://webmail.cityofswartzcreek.org

All usernames and passwords are currently the same as they previously were.

We still have a few changes to make but want to introduce them gradually as the stability of this new server is monitored. We will keep you posted as things progress i.e. GAL (Global Address List), Spam Assassin, SSL (Secure Sockets Layer) etc. We will be introducing these one at a time!

Thanks,
Don Korth

Paul Bueche
City Manager
pbueche@cityofswartzcreek.org

2-July-2012

Woodside Builders
C/O Mr. Kal Nemer
7550 Miller Road
Swartz Creek, Michigan 48473

Re: **Property #58-30-300-009**
AKA: Bristol Road Heritage Village Condominium Subdivision

Dear Mr. Nemer,

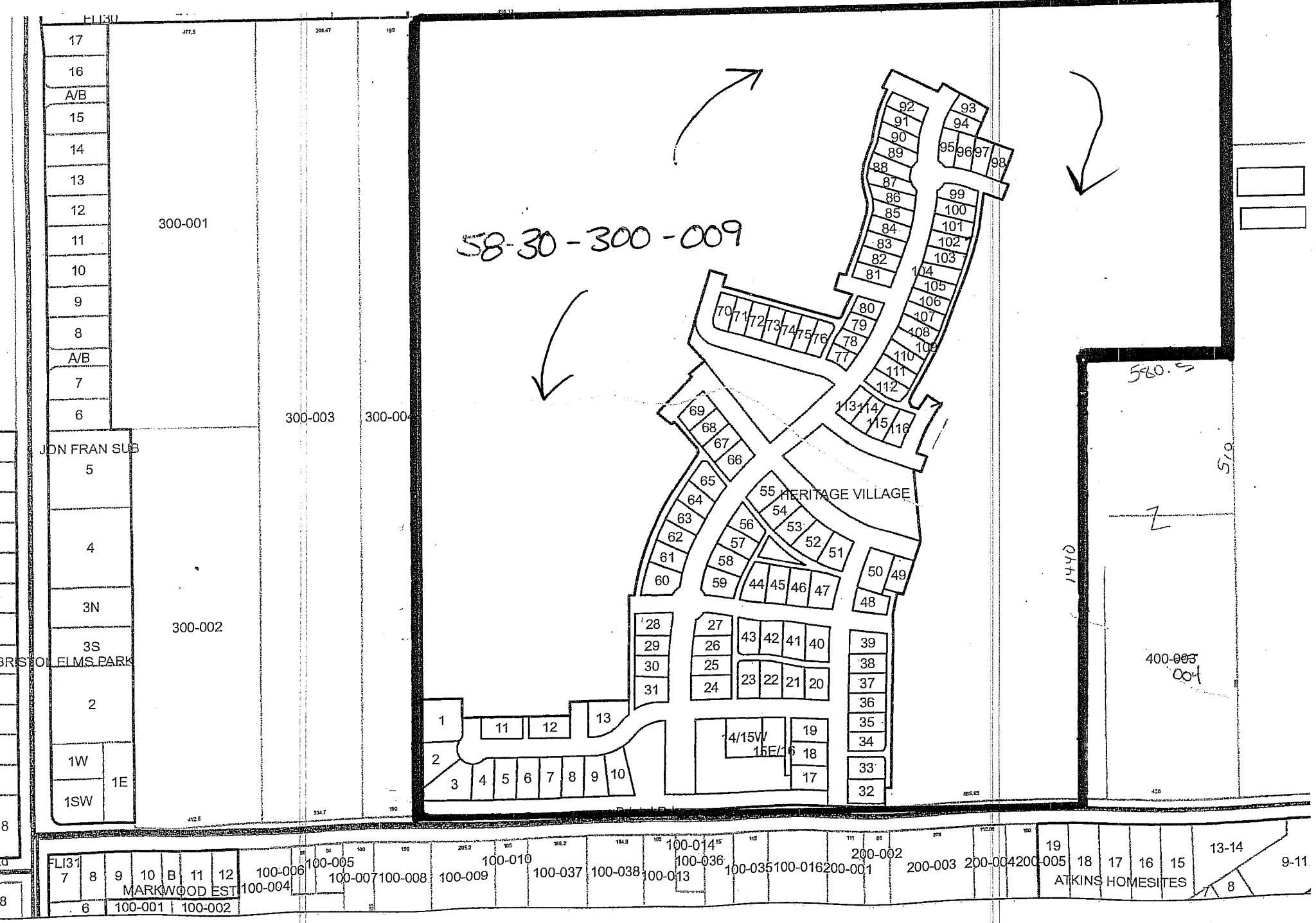
It has come to the attention of our Zoning, Code and Assessing Departments that the above captioned parcel may be in the process of a title transfer. Information we have also indicates the intended use may be for farming. In an effort to keep you informed, please accept this correspondence as notice that agriculture and related uses are *not* permitted within this district. Any such use would need to follow the City's Code of Ordinances for re-classification.

If you need further, please do not hesitate to contact me. In advance, your attention to this matter is appreciated.

Sincerely,

Paul Bueche
City Manager
City of Swartz Creek

COPY: Mr. Zettel, Zoning Administrator
Ms. MacDermaid, Assessor
Mr. Kehoe, Building - Code
Mr. Gildner, City Attorney
File


58-30-300-009
HERITAGE VILLAGE
JON FRAN SUB
BRISTOL ELMS PARK
MARKWOOD EST
ATKINS HOMESITES
300-001
300-002
300-003
400-004
100-001
100-002
100-004
100-005
100-006
100-007
100-008
100-009
100-010
100-013
100-014
100-035
100-036
100-037
100-038
200-001
200-002
200-003
200-004
200-005
14/15W
15E/16
560.5
1440
510

Feet

Office of Genesee County Sheriff

Emergency Management/Homeland Security

SHERIFF ROBERT J. PICKELL

Jenifier Boyer, P.E.M.
Emergency Management Manager
(810) 257-3064
(810) 237-6169 (fax)

Undersheriff Christopher Swanson
Captain Michael Tocarchick
Lieutenant Michael Chatterson

1002 S. Saginaw, Flint, MI 48502
(810) 257-3407
(810) 257-3077 (fax)

TO: All Municipalities within Genesee County

FROM: Robert J. Pickell, Sheriff

DATE: July 11, 2012

RE: May 4th Flood Debriefing

Since May 4th, the Office of Genesee County Sheriff, Emergency Management Homeland Security Division, County Officials, and Local Officials have all been working hand in hand in collecting information in regards to the residents impacted by the flooding. Genesee County has had multiple representatives from the State and FEMA come to aid the county and locals in damage assessments and collecting information in regards to impacts of flooded areas and residents.

In June, the President declined our Disaster Declaration Request. Recently, the State had made a determination that there is not enough additional information to forward to the President to request and appeal. There are many factors that come into consideration in making this determination. The county and local municipalities have done an excellent job in gathering information, conducting Damage Assessments and working in coordination with multiple agencies.

Currently the Small Business Administration is in Genesee County meeting with residents and business owners to offer low interest rate loans to those that qualify to help in the recovery efforts of those affected by the flood.

After a large incident such as this, a debriefing is held to review what worked well and didn't work so well so that improvements can be made to benefit future response, coordination and recovery efforts. At this time, the county feels to defer any longer would not be beneficial. A debriefing has been scheduled for Thursday, July 26th, 2012 from 1:30 p.m. until 3:30 p.m. at the Genesee County Administration Building, Third Floor Auditorium.

For further information or questions, please contact Sheriff Pickell 257-3406.

Thank you.

Paul Bueche

From: Pestle, John W [jwpestle@varnumlaw.com]
Sent: Wednesday, July 11, 2012 1:21 AM
To: Pestle, John W
Subject: Major Decision on Michigan Cable Law

The Federal District Court in Detroit has issued a major decision on cable franchising, striking down or changing key provisions in Michigan's 2006 "uniform video franchise" law. This will be of particular interest (A) to municipalities with pre-2007 cable franchises, or in other words, those which pre-date Michigan's 2006 video legislation, and (B) those which "going forward" are approached by a cable operator seeking a "uniform franchise". It may also (C) help municipalities which have already adopted a "uniform franchise" under the legislation, especially if they preserved their rights regarding challenges to it.

The decision (1) preserves provisions of pre-2007 franchises different from Michigan's "uniform franchise", such as those relating to PEG channels or requiring a cable company to provide in-kind services (free cable service to city buildings, running a PEG studio) which the 2006 legislation purported to modify and abolish, and (2) allows municipalities' to deny state "uniform franchise" applications so that they can instead negotiate franchises with different (and presumably more favorable) terms.

The decision came in a July 10 ruling in the City of Detroit's suit against Comcast which challenged portions of Michigan's 2006 video legislation. We represent the City of Detroit in this case.

The 2006 legislation, while retaining municipalities as the "franchising authority", had considerably weakened that role by: purporting to require municipalities to use (without modification) a uniform franchise created by the state; giving municipalities only 30 days to approve a franchise proposal; not apparently providing any ability to deny a proposal; deeming "approved" any application not timely acted on; and, modifying existing franchises to conform to the state's uniform franchise.

The court's decision overturns or undercuts many of these provisions of the 2006 legislation. If you would like a copy of the 42-page decision, which goes into much more detail, please email me. A copy will be available shortly on our web site at www.varnumlaw.com/cable-telecomm-recent-developments/ .

Regards,

John Pestle
Partner, Chair of Telecommunications Group
Direct: (616) 336-6725
Cell: (616) 481-0491

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www.varnumlaw.com
Bio V-Card

Please reply so stating if you wish to be removed from our email list.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT,

Plaintiff,

Case Number 10-12427
Honorable David M. Lawson

v.

STATE OF MICHIGAN and COMCAST OF DETROIT,

Defendants,

and

MICHIGAN ATTORNEY GENERAL,

Intervening Defendant.
_____/

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND REQUIRING ADDITIONAL BRIEFING

The City of Detroit has sued defendant Comcast of Detroit, the City's cable television provider, seeking to enforce the terms of the latest negotiated franchise agreement between Comcast and the City, which expired on February 28, 2007. The City contends that Comcast is a holdover tenant, and it must comply with all the terms of the expired agreement. Comcast maintains that it is operating under a new agreement that took effect by operation of a state law — the Uniform Video Services Local Franchise Act, Mich. Comp. Laws § 484.3301 *et seq.* — which took effect in 2007 and resulted in the elimination of the terms in the old franchise agreement that the City seeks to enforce. The City insists, however, that certain provisions of the Michigan Act are preempted by federal law and violate the Michigan constitution's guarantee to local units of government of control over their public spaces and rights-of-way, and the end result is that Comcast must comply with the old franchise agreement until a new one is approved by the City.

After the Court denied Comcast's motion to dismiss, the Michigan attorney general intervened to defend the Michigan Act, and all parties filed cross motions for partial summary judgment. The Court heard oral argument on October 27, 2011, and the parties have since sought and received permission to submit additional authority. The Court also received several amicus briefs. The Court now finds that the City has standing to challenge the validity of certain aspects of the Michigan Act on federal preemption grounds, but that it has no standing to challenge the Act's removal of municipalities' authority to enforce customer service and anti-discrimination provisions in existing franchise agreements, and that controversy is not ripe. The Court also finds invalid on federal preemption grounds the provisions of the Michigan Act addressing the modification of existing franchise agreements and barring enforcement provisions relating to public, government, and education channels. However, the Act's renewal procedures and its failure to require universal build-outs are not preempted by federal law. The Court also finds that the state attorney general has offered a construction of the Act that avoids a conflict with the state constitution, that is, that municipalities may refuse to approve a franchise renewal application and negotiate acceptable terms with the cable provider, without the standard form agreement automatically taking effect. Therefore, the Act does not violate the Michigan constitution. That holding leads to the conclusion that Comcast and the City have no current franchise agreement in place. Because Michigan law does not permit a franchisee to be regarded as a holdover tenant, Comcast must be found to be a trespasser. The parties will be directed to address an appropriate remedy. Therefore, the Court will grant in part and deny in part each of the parties' motions for partial summary judgment.

I. Facts and legislation

The facts of the case and the nature of the dispute were described in detail in the Court's earlier opinion denying Comcast's motion to dismiss. *See City of Detroit v. Comcast of Detroit, Inc.*, 771 F. Supp. 2d 781, 783-85 (E.D. Mich. 2011). To summarize, in 1994, Comcast assumed the obligations of a franchise agreement negotiated by the City and Comcast's predecessor, Barden Cablevision of Detroit. That agreement contained several features that were favorable to the City, including provisions that required Comcast to provide free hook-ups ("drops") and service to municipal and school buildings; maintain a network to facilitate communications among City buildings; furnish additional public, education, and government (PEG) channels and at least three PEG studios, plus mobile units, staff, and equipment; make payments to the Public Benefit Corporation to support PEG channels; and provide free transmission lines for the City's PEG channels. Before the agreement expired in February 2007, Comcast and the City began negotiating to renew the franchise. The City insisted that Comcast include in the new agreement language concerning consumer protections, anti-discrimination, and PEG channels, and on March 16, 2007, the City approved Comcast's application subject to additional terms that included those provisions. However, Comcast sent the City a letter on April 23, 2007 rejecting the franchise as approved. Instead, Comcast unilaterally declared that Michigan law deemed the franchise approved without the additional terms and has continued to operate in the City of Detroit despite the absence of a franchise agreement approved by the City.

Comcast relies primarily on Michigan's Uniform Video Services Local Franchise Act ("the Michigan Act"), Mich. Comp. Laws § 484.3301 *et seq.*, to justify its position. The City insists that several parts of the Michigan Act are preempted by the Cable Communications Policy Act ("the

Cable Act"), 47 U.S.C. § 521 *et seq.* Each body of legislation sets forth the respective obligations and limitations on cable operators and governmental franchising authorities. The dispute in this case can fairly be characterized as a disagreement over which provisions of the Cable Act are mandatory concerning cable operators' obligations and the authority of local governmental units, and which are merely permissive. The Cable Act contains an express preemption provision, and the parties do not seriously dispute the general proposition that state law cannot lawfully excuse a cable provider from complying with the mandatory parts of the Cable Act. As with most regulatory conflicts, however, the devil is in the details.

A. The Cable Act

When Congress enacted the Cable Act in 1985 to add Title VI to the Communications Act of 1934, there existed an "'illdefined [*sic*] . . . state of regulatory uncertainty'" created by the overlapping authority held by the FCC and local municipalities. *Alliance for Cmty. Media v. FCC*, 529 F.3d 763, 767-68 (6th Cir. 2008) (quoting *American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1559 (D.C. Cir. 1987). The amending legislation "preserv[ed] the critical role of municipal governments in the franchise process . . . while affirming the FCC's exclusive jurisdiction over cable service, and overall facilities which relate to such service." *Id.* at 768 (quoting *City of New York v. FCC*, 814 F.2d 720, 723 (D.C. Cir. 1987)). The Act, together with the Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460, passed in 1992, establishes a minimum level of services, PEG channel access, consumer protections, and anti-discrimination requirements that franchising authorities must include in their franchise agreements with cable operators. *See Time Warner Ent. Co., L.P. v. FCC*, 93 F.3d 957, 966 (D.C. Cir. 1996). The national legislation establishes both a floor and a ceiling concerning performance requirements that must be

included in franchise agreements and may be demanded from cable providers, it permits local franchising authorities to negotiate with cable operators for higher levels of service, and it prohibits laws and practices that fall below those levels. *See* 47 U.S.C. § 556(c) (stating that "any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded").

The Cable Act states that "[a] franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction." 47 U.S.C. § 541(a)(1). A franchising authority can be "any governmental entity empowered by Federal, State, or local law to grant a franchise." 47 U.S.C. § 522(10). A "franchise" is defined as "an initial authorization, or renewal thereof . . . , which authorizes the construction or operation of a cable system." 47 U.S.C. § 522(9). "A municipal franchise granted to a cable operator has commonly specified the nature of the cable system to be constructed, the service to be provided, and the rate which may be charged for those services." H.R. Rep. 98-934, at 19 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4656. The "franchising authority," sometimes called a "local franchising authority, or "LFA," refers to "any governmental entity empowered by Federal, State, or local law to grant a franchise." 47 U.S.C. § 522(10). In states where the franchising process includes approval by a state agency as well as the local government, the legislative history indicates that the term "franchising authority" should include the agency as well as the local government. H.R. Rep. 98-934, at 45 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4682. Without a franchise, a cable operator cannot provide cable services. 47 U.S.C. § 541(b)(1). "By delegating this task to LFAs, the 1984 Act effectively 'preserve[d] the

role of municipalities in cable regulation.'" *Alliance for Cmty. Media*, 529 F.3d at 768 (quoting *City of Dallas, Tex. v. FCC*, 165 F.3d 341, 345 (5th Cir. 1999)).

Section 541 "enumerates various requirements cable operators must follow to acquire cable franchises." *Alliance for Cmty. Media*, 529 F.3d at 768. Under section 541, the franchising authority also "shall assure" that no local residents are denied cable services based on their income, "may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support," and "may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service." 47 U.S.C. § 541(a)(3)-(4). The public, educational, and governmental access channels ("PEG channels") also receive special protection in section 531, which allows a franchising authority to set requirements within a franchise for designating certain channels for PEG use — but "only to the extent provided in this section" — and to require such designations within the franchise or franchise proposal documents. 47 U.S.C. § 531(a)-(b). Subsection 531(c) grants enforcement authority for PEG channel designation to the franchising authority:

> A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b) of this section.

47 U.S.C. § 531(c). This section does not specify how the franchising authority may pursue enforcement measures.

Section 544 governs the regulation of services, facilities, and equipment under a franchise and prevents the franchising authority regulating those aspects from taking action "except to the extent consistent with this subchapter." 47 U.S.C. § 544(a). The subchapter allows the local

franchising authority to establish requirements for new or renewed franchises and enforce the obligations in existing franchise agreements. 47 U.S.C. § 544(b)-(c). However, "[a]ny Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this subchapter." 47 U.S.C. § 544(f)(1).

Sections 545 and 546 govern the procedures for modification and renewal of existing franchises. The legislative history of the Cable Act indicates that these provisions were established to "provide protection to the cable operator" and are "not mandatory." H.R. Rep. 98-934, at 20, 26, 72 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4657, 4663, 4709. But the drafters anticipated that these provisions would supplement existing procedures and that the majority of renewals would occur "without regard to this section." H.R. Rep. 98-934, at 72 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4709. A cable provider may request modification of a franchise if the provider demonstrates that an existing requirement of the franchise is "commercially impracticable" or, with respect to a change in services, that the change will not affect "the mix, quality, and level of services" provided under the franchise agreement. 47 U.S.C. § 545(a)(1); H.R. Rep. 98-934, at 71 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4708. The Act requires that a franchising authority make a final decision on a modification request in a public proceeding within 120 days; that decision is appealable to either a federal or state court. 47 U.S.C. § 545(a)(2), (b)(1) & 555(a).

To commence the renewal process, the franchising authority may hold a public proceeding, affording notice and participation opportunities to the public, to discuss the cable needs of the community and the cable operator's performance. The franchising authority must hold such a proceeding if timely requested by the cable operator, and the cable operator may not begin the renewal process until after the proceeding has been completed. 47 U.S.C. § 546(a), (b)(1). The

statute also lays out a detailed procedure for renewing a franchise. The cable operator's renewal proposal submitted to the franchising authority "shall contain such material as the franchising authority may require." 47 U.S.C. § 546(b)(2). After the franchising authority receives the proposal, the Cable Act instructs it to provide public notice of the proposal and either renew the franchise or issue a preliminary assessment against renewal within four months. 47 U.S.C. § 546(c)(1). Either the cable operator or the franchise authority may commence an administrative proceeding to consider whether the operator has complied with governing laws and to assess the quality of services provided, the operator's ability to provide the services, and whether the proposal is reasonable. *Ibid.* Following the proceeding, the franchising authority "shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding." 47 U.S.C. § 546(c)(3). The statute sets out several valid grounds for denying a renewal proposal and grants a cable operator the right to appeal the final decision or failure to decide to a state or federal district court. 47 U.S.C. § 546(d), (e)(1).

Finally, the Cable Act includes a provision clarifying the interaction between Federal, State, and local authority. The Cable Act provides that "[n]othing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare," and that "[n]othing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services." 47 U.S.C. § 556(a)-(b). However, both provisions caution that State action is not restricted or affected to the extent that it is consistent with the provisions of the Act. *Ibid.*; *see also* H.R. Rep. 98-934, at 94 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4731. For example, "the state may exercise its authority over cable either by establishing a state franchising authority or by placing conditions on

a local government's grant of a cable franchise" in order to ensure that certain mandatory federal provisions are included in the franchise. H.R. Rep. 98-934, at 94 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4731. The Cable Act also states that "any provision of law of any State, political subdivision, or agency thereof, or franchising authority . . . which is inconsistent with this chapter shall be deemed to be preempted and superseded." 47 U.S.C. § 556(c); *see also* H.R. Rep. 98-934, at 94 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4731.

B. The Michigan Act

According to the legislative analysis furnished by the Michigan house of representatives fiscal agency, the Michigan Act was intended to facilitate new cable operators' entrance into the market throughout Michigan communities in order to foster competition by eliminating the cumbersome process of navigating through the varied requirements of individual municipalities. It was not intended to favor incumbent operators, who in many markets enjoyed a *de facto* monopoly, but rather to "encourag[e] more providers to enter the market." House Fiscal Agency, Legislative Analysis of Uniform Video Services Local Franchise Act (House Bill 6456, H-2 Substitute, with Floor Amendment), First Analysis, dated November 14, 2006, at 2, available at http://www.legislature.mi.gov/documents/2005-2006/billanalysis/House/pdf/2005-HLA-6456-3.pdf (last visited July 9, 2012) (hereinafter "House Legislative Analysis").

The Michigan Act, promulgated in early 2007, reaffirmed that a cable operator cannot provide cable or video services within an area without first obtaining a franchise from the local unit of government, and it created a uniform form for cable operators to use when applying for a franchise from a municipality anywhere in the state. Mich. Comp. Laws §§ 484.3302-484.3303. After a cable operator submits the proposed Uniform Franchise Agreement to the "franchising

entity" (i.e., the local unit of government), the Michigan Act requires the franchising entity to notify the provider as to the completeness of its submission within 15 days and inform the operator of the portions that are not complete. Mich. Comp. Laws § 484.3303(2). The franchising entity has 30 days from the submission date to approve a complete agreement. Mich. Comp. Laws § 484.3303(3). "If the franchising entity does not notify the provider regarding the completeness of the franchise agreement or approve the franchise agreement within the time periods required under this subsection, the franchise agreement shall be considered complete and . . . approved." Mich. Comp. Laws § 484.3303(3). The Michigan Act establishes ten-year terms under a Uniform Franchise, with a ten-year renewal period available upon application by the cable operator. Mich. Comp. Laws § 484.3303(7). The Michigan Act provides no further details on the renewal process for uniform franchise agreements, except to reference the process for initial applications.

For franchises existing at the time of the Michigan Act's promulgation, the Act explicitly states that "any provisions of an existing franchise that are inconsistent with or in addition to the provisions of a [uniform franchise agreement] are unreasonable and unenforceable by the franchising entity" and that "no existing franchise agreement . . . shall be renewed or extended upon the expiration date of the agreement." Mich. Comp. Laws § 484.3305(3), (1). Instead, the Act establishes three ways to create a valid Uniform Franchise: terminate the existing agreement and enter into a Uniform Agreement before the expiration date; amend the existing franchise agreement to include only the provisions applicable under the Michigan Act and the Uniform Franchise Agreement; or operate under the expired franchise until a uniform agreement is put into place, which must occur within 120 days of enactment. Mich. Comp. Laws § 484.3305(2). Legislative history for the Michigan Act makes little reference to the Cable Act or the potential conflict between the

state and federal law, except to note that "[a]mong the stated purposes of federal telecommunications law is . . . to 'establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community.'" House Legislative Analysis at 5.

On January 30, 2007, the Michigan Public Service Commission issued the standard form pursuant to the Act. *See* Mich. Comp. Laws § 484.3302. The form includes a list of requirements with which cable operators must comply, including:

> C. The Provider agrees to comply with all valid and enforceable federal and state statutes and regulations.
> D. The Provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the Franchising Entity.
> . . .
> F. The Provider shall comply with the public, education, and government programming requirements of Section 4 of the Act.
> G. The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, Mich. Comp. Laws 445.901 to 445.922.
> . . .
> I. The Provider shall comply with the Consumer Privacy Requirements of 47 U.S.C. § 551 applicable to cable operators.
> . . .
> A. The Provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
> . . .
> A. A video service Provider shall calculate and pay an annual video service provider fee to the Franchising Entity.
> . . .
> C. The Franchising Entity shall not demand any additional fees or charges from a provider and shall not demand the use of any other calculation method other than allowed under the Act.
> . . .
> A. The video service Provider shall designate a sufficient amount of capacity on its network to provide for the same number of public, education, and government access

> channels that are in actual use on the incumbent video provider system on the effective date of the Act or as provided under Section 4(14) of the Act.
> . . .
> A. The video service Provider shall also pay to the Franchising Entity as support for the cost of PEG access facilities and services an annual fee . . . .
> . . .
> A. The Provider shall establish a dispute resolution process for its customers. Provider shall maintain a local or toll-free telephone number for customer service contact.

Michigan Public Service Commission, Instructions for Uniform Video Service Local Franchise Agreement, available at http://www.michigan.gov/documents/mpsc/uniform_video_services_local_franchise_agrement_275178_7.doc (last visited July 10, 2012); *see also* Mich. Comp. Laws §§ 484.3302(3), 484.3304. The form itself specifically prevents municipalities from altering the Uniform Franchise Agreement. However, the franchising entity and a cable operator may enter into a "voluntary franchise agreement" with additional terms. Mich. Comp. Laws § 484.3313. The Michigan Act also grants the Michigan Public Service Commission the authority to adjudicate violations of the Act and award remedies consisting of fines, revocation of franchise agreements, or cease and desist orders. Mich. Comp. Laws § 484.3314.

II. Parties' arguments

The City argues in its motion for partial summary judgment that several provisions of the Michigan Act conflict with the Cable Act expressly or by implication, and therefore the Michigan law is preempted by federal law. The conflicting provisions, says the City, are those dealing with renewal and modification of franchises, requiring support for PEG programming, enforcement of franchise provisions including those regulating PEG channels and customer service requirements, anti-discrimination and redlining, and build-out requirements. The City also contends that article 7, section 29 of the Michigan constitution commits to local governments the authority to issue

franchises to public utilities seeking to operate within municipal boundaries, and the Michigan Act contravenes that provision by prescribing a uniform franchise agreement that interferes with the City's authority to negotiate terms with franchisors. Finally, the City argues that because the Michigan Act is preempted and the Cable Act requires that cable operators have a franchise, the 1985 Agreement remains in effect. The City notes that the Cable Act does not allow cable operators to operate without a franchise and argues that operators that continue to operate after a franchise agreement expires are holdover tenants, subject to the terms of the expired agreement.

Intervening defendant State of Michigan bases its argument primarily on the idea that local governments are creatures of legislation and subdivisions of the state, and derive any franchising authority they have from the state. Therefore, the argument goes, the Michigan legislature has the power to place limits on the terms that local governments may impose on companies through their power to grant franchises. Of course, the relationship between the state and its local units of government is governed by the state constitution, and article 7, section 29 of that constitution speaks to a municipality's authority to grant franchises. But another section of that constitution , article 7, section 22, addresses in general terms the authority of cities to adopt ordinances and subjects that authority "to the constitution and law." Mich. Const. art. 7, § 22 (1963). The State contends, therefore, that the Michigan Act is a proper limitation on the City's franchising authority.

The State also contends that the City does not have standing to challenge the Michigan Act because it has not suffered any harm. It presents its standing argument in four parts. First, the State argues that the City was not harmed by the purported modification of the 1985 Agreement by the Michigan Act, primarily because the City has not alleged that Comcast violated the terms of the 1985 Agreement, nor that the City attempted to enforce the terms of that Agreement. Second, the

State contends that the City has not been harmed because it has not been denied PEG channel access. The State points out that the City has not alleged that it requested assurances of adequate capacity from Comcast, nor explained when it might require more PEG channels than are currently available. Third, the State says that the City has not alleged that defendant Comcast has violated the Michigan Act's customer service provisions. Fourth, the State argues that the City cannot challenge the Michigan Act's anti-discrimination provisions because it has not alleged that Comcast has violated those provisions.

Finally, the State maintains that the renewal provisions of the Michigan Act do not conflict with and therefore are not preempted by the Cable Act. It insists that the Michigan Act's renewal procedures supplement the Cable Act's renewal procedures and are consistent with the goals of the Cable Act. The State believes that the Cable Act sets forth mostly broad guidelines for the regulation of cable systems, and therefore it does not occupy the entire regulatory field and leaves certain issues to state and local determination. More significantly, the State does not read the Michigan Act as precluding franchising entities from rejecting a franchising agreement proposal. The State argues that the provision that the City cites for the proposition that franchising authorities are not permitted to deny franchise applications under the Michigan Act actually provides only that if a franchising proposal is not approved — that is, acted upon — within 30 days, it is considered approved. *See* Mich. Comp. Laws § 484.3303(3). The State reads that section as allowing a franchising authority to announce that it plans to review the proposal, and then the Cable Act permits the franchising entity to conduct a contested case to determine whether it had a legal basis to reject the proposal. *See* 47 U.S.C. § 546(c)(1), (d). The States argues that the Michigan Act should be interpreted to be consistent with the federal act to the extent possible, and it urges the

Court to interpret the Michigan Act to permit a franchising entity to deny a proposal even if the proposal is a uniform agreement. The State points out that the Michigan Act allows franchise authorities and cable operators to reach voluntary agreements that are different from the uniform franchise agreement contained in the Michigan Act, and therefore a franchising authority would be in its rights to reject a uniform agreement and work towards a voluntary agreement.

For its part, Comcast repeats the State's argument that the power to define the extent of local governments' role as a franchising authority lies with the state. Therefore, Comcast insists, the Michigan Act is consistent with the Cable Act and the state constitution. Comcast reads the Cable Act and its legislative history as allowing the state to take over some or all of the franchise process; the division of labor on franchising was left to the state. Comcast also says that although the renewal and modification provisions of the Michigan Act are consistent with the Cable Act, those provisions do not apply here in any event because the 2007 franchise was a new agreement, not a renewal. Moreover, it argues, the renewal procedures established by the Cable Act are permissive only and not mandatory; therefore, the State is free to establish procedures of its own. Next, Comcast argues that the anti-discrimination provisions of the Michigan Act are consistent with the Cable Act; the Michigan Act prohibits discrimination against low-income persons just as the Cable Act does. Next, Comcast contends that the PEG provisions of the Cable Act do not provide minimum requirements for cable operators and thus do not preempt the Michigan Act. Moreover, according to Comcast, the Cable Act's language is permissive and does not require any franchising authority, whether state or local, to establish PEG capacity, facilities, or financial support. Comcast also argues that the customer service provisions of the Michigan Act are not preempted by the Cable Act because the state, not the city, retains the power under the Cable Act to allocate franchising

authority, responsibilities, and oversight. Comcast also believes that the Michigan Act is compatible with the Cable Act's customer service standards; the Michigan Act not only fully incorporates the customer service standards in the Cable Act, but also incorporates that Michigan consumer protection act. Comcast also mimics the State's argument that there is no implied preemption because the Michigan Act, intended to promote and foster competition, is in harmony with the stated purposes of the Cable Act.

Lastly, Comcast says that each of the plaintiff's claims anticipate events that have not yet happened and may never happen, and therefore the controversy is not ripe for adjudication. Comcast observes that the franchise renewal process had stalled before the Michigan Act was enacted, and because the Cable Act gives cable operators, and not cities, the right to challenge a renewal or modification process in court or require a cable operator to renew a franchise, there is nothing in the Cable Act to prevent a cable operator from allowing its unmodified franchise to expire consistent with state law and to obtain a "new" authorization under that state law. Comcast also states that the plaintiff has made no factual allegation of a concrete dispute with respect to any other provision of the Cable Act.

III.

As mentioned above, the parties have filed cross motions for partial summary judgment. The fact that the parties have filed cross motions for summary judgment does not automatically justify the conclusion that there are no facts in dispute. *Parks v. LaFace Records*, 329 F.3d 437, 444 (6th Cir. 2003) ("The fact that the parties have filed cross-motions for summary judgment does not mean, of course, that summary judgment for one side or the other is necessarily appropriate."). Instead, the Court must apply the well-recognized summary judgment standards when deciding such cross

motions: when this Court considers cross motions for summary judgment, it "must evaluate each motion on its own merits and view all facts and inferences in the light most favorable to the nonmoving party." *Westfield Ins. Co. v. Tech Dry, Inc.*, 336 F.3d 503, 506 (6th Cir. 2003).

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A trial is required only when "there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The parties have not seriously contested the basic facts of the case. Where the material facts are mostly settled, and the question before the court is purely a legal one, the summary judgment procedure is well suited for resolution of the case. *See Cincom Sys., Inc. v. Novelis Corp.*, 581 F.3d 431, 435 (6th Cir. 2009).

Although some of the parties' arguments apply to the concept of preemption generally, the Court believes it is more useful to address the specific provisions of the statutes in turn. The ultimate question is whether Comcast is in compliance with the terms of both federal and state law that mandates that a valid franchise be in place before a cable operator can furnish and charge for cable services in a municipality.

A. Renewal and modification procedures

The State and Comcast contend that the Court does not have subject matter jurisdiction to entertain the City's challenge to the Michigan Act's renewal and modification procedures. The State argues that the City lacks standing, and Comcast contends the claim is not ripe.

Standing and ripeness are important jurisdictional concepts, although neither defendant raised them in their initial challenge to jurisdiction stated in their motions to dismiss. Nevertheless,

"'a plaintiff must demonstrate standing separately for each form of relief sought.'" *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 352 (2006) (quoting *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.,* 528 U.S. 167, 185 (2000)); *see also Johnson v. Turner,* 125 F.3d 324, 338 (6th Cir. 1997). "To establish Article III standing, a litigant must show (1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) that the injury will likely be redressed by a favorable decision." *Barnes v. City of Cincinnati,* 401 F.3d 729, 739 (6th Cir. 2005) (citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992)).

The injury must be "actual or imminent, not conjectural or hypothetical." *Lujan,* 504 U.S. at 560 (internal quotations and citations omitted). "[A] plaintiff is not entitled to injunctive or declaratory relief '[a]bsent a sufficient likelihood that he will again be wronged in a similar way,' *City of Los Angeles v. Lyons,* 461 U.S. 95, 111 (1983), unless the plaintiff is subject to 'continuing, present adverse effects,' *O'Shea v. Littleton,* 414 U.S. 488, 496 (1974)." *Schultz v. United States,* 529 F.3d 343, 349 (6th Cir. 2008); *see also Fieger v. Ferry,* 471 F.3d 637, 643 (6th Cir. 2006) ("In the context of a declaratory judgment action, allegations of past injury alone are not sufficient to confer standing. The plaintiff must allege and/or 'demonstrate actual present harm or a significant possibility of future harm.'") (quoting *Peoples Rights Org., Inc. v. City of Columbus,* 152 F.3d 522, 527 (6th Cir. 1998)). For example, the Sixth Circuit has held that a plaintiff who has *repeatedly* attempted to obtain employment with a municipality had standing to challenge certain hiring practices. *Cleveland Branch, N.A.A.C.P. v. City of Parma, OH,* 263 F.3d 513, 528 (6th Cir. 2001). The injury also must be "fairly traceable" to the defendants' conduct. *Schultz*, 529 F.3d at 349 (internal quotation marks omitted).

The State argues that the City has no standing to challenge the franchise modification provisions of the Michigan Act insofar as it permitted modification of the 1985 Agreement because the City has not alleged that Comcast breached the 1985 Agreement and the City has not attempted to enforce the 1985 Agreement. This contention is perplexing; the central focus of City's complaint is that Comcast must abide by the terms of the 1985 Agreement and has failed to do so. The lone case that the State cites for the proposition that the plaintiff cannot challenge the modification of the 1985 Agreement until it seeks to enforce it, *Warth v. Seldin*, 422 U.S. 490 (1975), does not stand for that proposition. In *Warth*, the Supreme Court held that a building association lacked standing to challenge a zoning ordinance because none of the members of the association had been precluded from pursuing a project because of the ordinance. *Id.* at 516. In other words, the building association could not point to any specific injury to any of its members resulting from the ordinance. There is simply nothing in this case that implies that in order to have standing to challenge a modification to a contract one must first have sought to enforce the terms of the contract. In contrast, here the City points to a specific injury resulting from the modification of the 1985 Agreement: defendant Comcast has ceased providing services and funds to the plaintiff. The City has satisfied the constitutional requirements of standing for its challenge to the renewal and modification procedures mandated by the Michigan Act.

The concept of "ripeness 'is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.' . . . The ripeness doctrine serves to 'avoid[ ] . . . premature adjudication' of legal questions and to prevent courts from 'entangling themselves in abstract' debates that may turn out differently in different settings." *Warshak v. United States,* 532 F.3d 521, 525 (6th Cir. 2008) (quoting *Nat'l Park Hospitality Ass'n v. Dep't of*

Interior, 538 U.S. 803, 807-08 (2003)). The Sixth Circuit has explained that "'"a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all."' *Cooley v. Granholm,* 291 F.3d 880, 883-84 (6th Cir. 2002) (quoting *Texas v. United States,* 523 U.S. 296 (1998)). As a rule, we do not allow litigation on premature claims to ensure that courts litigate 'only existing, substantial controversies, not hypothetical questions or possibilities.' *City Commc'ns, Inc. v. City of Detroit,* 888 F.2d 1081, 1089 (6th Cir. 1989)." *Winget v. JP Morgan Chase Bank, N.A.,* 537 F.3d 565, 581-82 (6th Cir. 2008). Another factor in the ripeness consideration is whether there is sufficient "hardship to the parties [in] withholding court consideration" until there is a legal action for damages. *See Abbott Laboratories v. Gardner,* 387 U.S. 136, 149 (1967), *abrogated with respect to other principles by Califano v. Sanders*, 430 U.S. 99 (1977).

Comcast argues that the City's claims are not ripe because the City alleges only that Comcast breached the 1985 Agreement after that agreement had already expired. That argument in turn is based on Comcast's notion that once the franchise agreement expires on its own terms, there can be no "renewal," and Comcast must be treated as a new applicant for a new franchise. But that idea ignores the reality that Comcast is the incumbent cable operator and has no intention of withdrawing from that market. Treating Comcast as a "new" applicant makes no sense under the language and purposes of either the Cable Act or the Michigan Act. The Cable Act builds in due process protections for incumbent operators throughout the renewal process, presumably recognizing their capital investment in infrastructure. *See, e.g.,* 47 U.S.C. § 546(c)(1) (requiring public notice of an incumbent operator's renewal proposal and a decision within four months); § 546(c)(3) (requiring "a written decision granting or denying the proposal for renewal based upon the record of such

proceeding"); § 546(d), (e)(1) (establishing grounds for denial of renewal and a right to appeal); *see also* H.R. Rep. 98-934, at 73 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4710. The Michigan Act focuses primarily on new applicants for a franchise and purportedly was intended to facilitate market entrance by them and competition. *See* House Legislative Analysis at 2. The fact that the alleged breaches of the 1985 Agreement occurred after that agreement expired, therefore, is irrelevant. The City contends that Comcast remained bound by the 1985 Agreement after its expiration, and therefore its failures to provide services and funds as required under that agreement constituted a breach of the agreement. Comcast's failure to provide those services and funds is the concrete factual claim that allows the Court to adjudicate this dispute under Article III; the risk that Comcast will continue to withhold those services and funds constitutes the hardship faced by the City if the Court refuses to adjudicate the complaint. *See Sch. Dist. of City of Pontiac v. Sec'y of U.S. Dep't of Educ.*, 584 F.3d 253, 263 (6th Cir. 2009). This aspect of the City's claim is clearly ripe for judicial resolution.

The City contends that the renewal and modification procedures are preempted by the Cable Act. Federal preemption is based on the Supremacy Clause of the United States Constitution. U.S. Const. art. 6, cl. 2. In preemption cases, "[t]he purpose of Congress is the ultimate touchstone." *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 485 (1996). Traditionally, the Supreme Court has identified two types of preemption: express preemption and implied preemption. *State Farm Bank v. Reardon*, 539 F.3d 336, 341-42 (6th Cir. 2008) (citing *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152-53 (1982)). Express preemption occurs when Congress so states in legislation. "There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision." *Arizona v. United States*, --- U.S. ---, 2012

WL 2368661, at *7 (June 25, 2012) (citing *Chamber of Commerce of United States of America v. Whiting*, 563 U.S. ---, ---, 131 S. Ct. 1968, 1974-75 (2011)). Implied preemption is further subdivided into at least two categories: "field pre-emption, where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it, and conflict pre-emption, where compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (internal citations and quotation marks omitted).

"[I]n all preemption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine,* 555 U.S. 555, 565 (2009) (internal quotation marks and ellipses omitted); *see also Wimbush v. Wyeth*, 619 F.3d 632, 642-43 (6th Cir. 2010). The Supreme Court has explained that conflict preemption can occur in one of two ways: "when compliance with both federal and state regulations is a physical impossibility, or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Fidelity Fed. Sav. and Loan Assoc. v. de la Cuesta,* 458 U.S. 141, 153 (1982) (internal quotations and citations omitted). Conflict preemption analysis "should be narrow and precise, 'to prevent the diminution of the role Congress reserved to the States while at the same time preserving the federal role.'" *Downhour v. Somani,* 85 F.3d 261, 266 (6th Cir. 1996) (quoting *Nw. Cent. Pipeline Corp. v. State Corp. Comm'n,* 489 U.S. 493, 515 (1989)).

The Cable Act contains express preemption language, providing that "any provision of the law of any State . . . which is inconsistent with this chapter shall be deemed to be preempted and superseded." 47 U.S.C. § 556(c). The City argues that the Michigan Act is preempted by the Cable Act based on both express preemption and implied preemption. It does not contend that field preemption applies here, but it does maintain that the Michigan Act conflicts with the Cable Act, both because it is impossible to comply with certain aspects of both laws, and because the Michigan Act creates an obstacle to achieving the purpose behind the Cable Act.

The City argues that the Cable Act provides a set of procedures for renewal and modification of franchise agreements that are designed to protect the needs of local communities, and the Michigan Act eliminates those procedures and provides for unilateral renewal and modification of franchise agreements. The defendants argue that the Michigan Act fills gaps in the procedures outlined in the Cable Act and the renewal and modification procedures in the Cable Act are optional rather than mandatory.

1. Renewal

Both the text and the legislative history of the Cable Act suggest that the renewal procedures contained in 47 U.S.C. § 546 are not mandatory. Section 546 governs the procedures to be used in the event that a franchising authority and a cable operator cannot agree to a renewal of the franchise. In such an event, the statute provides that "[a] franchising authority *may* . . . commence a proceeding which affords the public in the franchise area appropriate notice in participation," after which a "cable operator seeking renewal of a franchise *may* . . . submit a proposal for renewal." 47 U.S.C. § 546(a)(1), (b)(2) (emphasis added). Use of the word "may" in this context suggests that neither the public proceeding nor the submission of proposals is required, and that the parties are free to

proceed in a different manner. The legislative history of the Cable Act supports this view of the language. The House Committee stated in its report that it expected that the "vast majority" of franchises would not go through this renewal process. *Union CATV, Inc. v. City of Sturgis*, 107 F.3d 434, 438 n.2 (6th Cir. 1997) (quoting H.R. Rep. No. 98-934 at 72, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4709). The House Report describes this provision in the legislation and then states explicitly that "[t]he provisions contained in this section are not mandatory." H.R. Rep. No. 98-934 at 72, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4709.

The fact that this renewal procedure is not mandatory suggests that Congress envisioned the possibility of alternative procedures, such as those contained in the Michigan Act. The Cable Act merely describes one possible renewal procedure; using another procedure, such as that contained in the Michigan Act, would not put a franchising authority out of compliance with the Cable Act. Therefore, the Michigan Act renewal procedures do not contradict the Cable Act and are not preempted on that basis, as it would not be physically impossible to comply with both the Michigan Act and the Cable Act.

Comcast reads the Michigan Act as mandating renewal 30 days after a franchising authority receives a "complete" renewal application, even if the franchising authority disagrees with the cable operator's renewal proposal. *See* Mich. Comp. Laws § 484.3303(3). If that is so, the City counters, then the state statute trenches upon the City's home rule rights granted by article 7, section 29 of the Michigan constitution. That provision states:

> No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as

> otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

Mich. Const. art. 7, § 29 (1963). And, the City asserts, those rights must be broadly construed per article 7, section 34, which states:

> The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

Mich. Const. art. 7, § 34 (1963).

The Michigan attorney general, on behalf of the State, correctly points out that the Court should interpret the state law in a way that is consistent with federal law where possible, *see Rushton v. Schram*, 143 F.2d 554, 559 (6th Cir. 1944), and the general caution against avoiding a statute on constitutional grounds where possible counsels the same approach, *U.S. ex rel Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 407-08 (1909) ("It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. . . . [W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." (internal citations omitted)); *see also National Federation of Independent Business v. Sebelius*, --- U.S. ---, ---, 2012 WL 2427810, at *23 (June 28, 2012) (observing that "'every reasonable construction must be resorted to, in order to save a statute from unconstitutionality'" (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895))). He reasons that the two statutes can be reconciled because the Cable Act offers the option to both a cable operator and a franchising authority of pursuing a contested

case when the renewal process is stalled by disagreements, *see* 47 U.S.C. §§ 546, 555, and the Michigan Act allows the parties to negotiate additional terms on a consensual basis, *see* Mich. Comp. Laws § 484.3313.

The Michigan Act does contain language that seems to vitiate municipalities' power to withhold consent from a uniform franchise agreement. *See* Mich. Comp. Laws § 484.3303(3) ("A franchising entity shall have 30 days after the submission date of a complete franchise agreement to approve the agreement. If the franchising entity does not notify the provider regarding the completeness of the franchise agreement or approve the franchise agreement within the time periods required under this subsection, the franchise agreement shall be considered complete and the franchise agreement approved."); Mich. Comp. Laws § 484.3308(1) ("A franchising entity shall allow a video service provider to install, construct, and maintain a video service or communications network within a public right-of-way and shall provide the provider with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way."). But the interpretation of the Michigan Act urged by the State — that municipal governments retain the right to deny franchising entities' proposed agreements, and that in the event a municipality denied a uniform franchise application within the 30-day period, a municipal government would be permitted to work toward achieving a voluntary agreement under the Michigan Act — is a plausible construction of the statutory text. The State presumably reads section 3303(3) as requiring "action" on an application by a municipality within 30 days, and that action could be in the form an approval or rejection. Such an interpretation preserves the City's rights under article 7, section 29 of the state constitution and is consistent with the procedures outlined in the Cable Act.

The Court finds that the Michigan Act's procedures for renewal, as so interpreted, do not conflict with (and therefore are not preempted by) the Cable Act and do not violate the Michigan constitution.

2. Modification

The modification procedures in the Cable Act, by contrast, contain language suggesting that the prescribed procedures are mandatory. The Cable Act states that a cable operator may obtain a modification "*if* the cable operator demonstrates" that the requirement it seeks to modify is commercially impracticable and that the proposed modification is appropriate on that basis or that the level of services under the franchise will be maintained. 47 U.S.C. § 545(a)(1)(A), (B) (emphasis added). Franchising authorities "*shall*" make final decisions on these modification requests "in a public proceeding . . .within 120 days." 47 U.S.C. § 545(a)(2) (emphasis added). That language suggests, in contrast to the language governing renewal procedures, that Congress intended the modification procedure to be exclusive, and thus that a state act that purported to allow modification of franchise agreements in a different way would expressly conflict with the Cable Act. The contextual use of "may" in this section of the Cable Act is quite different from its use in the previous section governing renewals. In this case, the Act states that cable operators may obtain modifications if certain conditions are met – "may" is used to demonstrate that the cable operator is able to obtain modifications, *but only if* it follows the procedure outlined in the Act. In contrast, in the section governing renewals, the Act states that franchising authorities may use the outlined procedures, and does not place any conditions on that permission.

The Michigan Act, by rendering unenforceable all provisions of existing franchise agreements that do not accord with the uniform agreement, purports to modify franchise agreements

in a manner not contemplated by the Cable Act. *See* Mich. Comp. Laws § 484.3305(3) ("On the effective date of this act, any provisions of an existing franchise that are inconsistent with or in addition to the provisions of a uniform video service local franchise agreement are unreasonable and unenforceable by the franchising entity."); *see also* H.R. Rep. No. 98-934 at 94, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4731 ("A state may not, with regard to [a requirement on a cable operator], enact a statute which requires compliance prior to the expiration of the current franchise."). Section 3305(3) can be read to mean only that any franchise authorities with agreements containing terms inconsistent with the uniform agreement saw those terms invalidated and replaced by the uniform terms, which certainly would constitute a modification of those agreements. The allegations in the complaint follow that argument: Comcast is no longer providing PEG support and funds that it was required to provide under the 1985 Agreement because it contends that it is no longer obligated to do so as a result of the Michigan Act. Because the Michigan Act purports to modify franchise agreements in a manner at odds with the procedures set out in the Cable Act, the Michigan Act expressly conflicts with the Cable Act on this point. The provision of the Michigan Act invalidating provisions in existing franchises is expressly preempted by the Cable Act.

B. PEG channels

The City contends that Comcast was required under the terms of the 1985 Agreement to provide an additional PEG channel, and that Comcast is not providing that channel because of the modifications in the agreement as a result of the Michigan Act. The defendants contend that this claim must be dismissed on standing and ripeness grounds. The argument need not detain the Court for long. The City has asserted that it was harmed by the Michigan Act's limiting the number of PEG channels because as a result Comcast has not provided an additional PEG channel as required

by the 1985 Agreement. That is sufficient to constitute an actual and concrete injury conferring standing to challenge the Michigan Act on this point, and the controversy is ripe for adjudication. *Lujan,* 504 U.S. at 560.

One aspect of the City's claim here is that the Michigan Act denies it and other local franchising authorities power to *establish* requirements that cable operators must meet. The City argues that the Cable Act grants those powers to it and other local franchising authorities, and thus that the Michigan Act's implementation of uniform requirements on those features conflict with the Cable Act. Comcast counters that states are the ultimate franchising authorities under the Cable Act, and therefore the Michigan Act's determinations as to PEG channel requirements do not conflict with the Cable Act. The defendants have the better argument, inasmuch as the Cable Act purports to establish only minimum — not absolute — requirements for including PEG channel services in franchising agreements. The Cable Act states that "[n]othing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter." 47 U.S.C. § 556(b). That language suggests that states retain the power under the Cable Act to regulate cable franchising by local governments, as long as the states' regulation does not violate any requirements of the Cable Act. The legislative history supports that view:

> The Committee does not intend Title VI to upset the traditional relationship between state and local governments, under which a local government is a political subdivision of the state and derives its authority from the state. A state may, for instance, exercise authority over the whole range of cable activities, such as negotiations with cable operators; consumer protection; construction requirements; . . . and other franchise-related issues — as long as the exercise of that authority is consistent with Title VI. If, under [this Act] or any state law, a requirement imposed upon a cable operator must be reflected in a franchise, *the state may exercise its authority over cable either by establishing a state franchising authority or by placing conditions on a local government's grant of a cable franchise.*

H.R. Rep. No. 98-934 at 94, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4731 (emphasis added). There is no conflict between the Michigan Act and the Cable Act (and therefore no preemption) unless the PEG access requirement in the Michigan Act permits a cable operator to avoid requirements established in the Cable Act. But the City does not assert that the Michigan Act establishes specific requirements for furnishing PEG channels that conflict with requirements in the Cable Act. Therefore, that aspect of the City's preemption claim fails.

The City also asserts that the Michigan Act's provisions governing PEG channel *support* expressly conflict with the Cable Act's requirements on that point because the Michigan law limits franchising authorities' right to enforce PEG requirements contained in existing franchising agreements and prohibits franchising authorities from increasing the number of PEG channels. That is a materially different argument. The Cable Act provides that franchising authorities "may enforce any requirement in any franchise regarding the providing or use of [PEG] channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity." 47 U.S.C. § 531(c). The Cable Act also states that when awarding a franchise, a franchise authority "may require adequate assurance that the cable operator will provide adequate [PEG] channel capacity, facilities, or financial support." 47 U.S.C. § 541(a)(4)(B). Comcast argues that section 541(a)(4)(B) actually *limits* franchising authorities' enforcement power under section 531(c), because authorities may only enforce demands for "adequate" PEG channel support. It asserts that because the Cable Act does not define "adequate," the state, as the ultimate franchising authority, has the right to determine what constitutes "adequate" support for PEG channels and thus what is enforceable under the Cable Act.

Comcast may be correct that the Michigan Act is not preempted with respect to its grant of authority to the state to determine what PEG support may be deemed "adequate." However, the Michigan Act's provisions that curtail a municipality's authority to enforce PEG channel requirements in existing agreements conflicts with the Cable Act. Section 541(a)(4)(B) of the Cable Act allows a franchising authority — which certainly included the City — to include in a franchise agreement "adequate assurance" from the cable operator for support of PEG channels. But once the agreement is in place, "[a] franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity." 47 U.S.C. § 531(c). The Michigan Act states that any franchise agreement provisions conflicting with the uniform agreement are unenforceable, including provisions regarding PEG channel support. *See* Mich. Comp. Laws § 484.3305(3). The Michigan Act therefore prohibits franchising authorities from enforcing franchise provisions that the Cable Act grants franchising authorities the explicit power to enforce. That conflict invokes the explicit preemption language of the Cable Act, 47 U.S.C. § 556(c) (stating that "any provision of law of any State, political subdivision, or agency thereof, or franchising authority . . . which is inconsistent with this chapter shall be deemed to be preempted and superseded"). *See City of Dearborn v. Comcast of Michigan III, Inc.*, No. 08-10156, 2008 WL 4534167 at *5 (E.D. Mich. Oct. 3, 2008, *as amended* Nov. 25, 2008). Other courts have recognized a franchising authority's enforcement power under section 531(c). *See Denver Area Educ. Telecommunications Consortium, Inc. v. FCC,* 518 U.S. 727, 789 (1996) (Kennedy, J., concurring in part, concurring in the judgment in part, and dissenting in part) ("[§ 531(b)] authorize[s] local franchise authorities to require cable operators to set aside channel capacity for PEG [channel] access when seeking new franchises or renewal of old ones"); *Goldberg v. Cablevision Sys. Corp.,* 261 F.3d 318, 320-21 (2d

Cir. 2001) (a franchising authority can "enforce any requirement in any franchise [agreement] regarding the providing or use of [PEG] channel capacity") (citation omitted); *Time Warner Ent. Co., L.P.,* 93 F.3d at 972 (franchising authorities may mandate PEG channel access as a franchise condition); *Time Warner Cable of New York City v. City of New York,* 943 F. Supp. 1357, 1367 (S.D.N.Y. 1996) ("The [Cable Act gave] . . . a franchising authority the power to require an operator to provide PEG channels."). "Because the [Michigan Act] makes unenforceable what federal law explicitly makes enforceable, the [Michigan Act] is preempted by 47 U.S.C. § 531." *City of Dearborn*, 2008 WL 4534167 at *5.

C. Customer service provisions

For the same reasons, the Michigan Act's restrictions against municipalities from enforcing customer service likely conflict with 47 U.S.C. § 552(a)(1) ("A franchising authority may establish and enforce . . . customer service requirements of the cable operator . . . ."). Similarly, the Michigan Act's safe harbor provisions, which provide defenses to claims that a cable operator has violated the Cable Act's prohibition on income discrimination, are problematic. The Cable Act states:

> In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

47 U.S.C. § 541(a)(3). The legislative history of the Cable Act suggests that Congress intended this provision to require franchise authorities to mandate the wiring of all areas covered by the franchise. H.R. Rep. No. 98-934 at 59, *reprinted in* 1984 U.S.C.C.A.N. 4655, 4696 ("Under this provision, a franchising authority in the franchise process shall require the wiring of all areas of the franchise area to avoid this type of practice [income-based discrimination]."). In contrast, the Michigan Act

provides that it shall be a defense to a charge of race- or income-based denial of access (which is prohibited under the Michigan Act, see Mich. Comp. Laws § 484.3309(1)) that:

> (a) Within 3 years of the date it began providing video service under this act, at least 25% of households with access to the provider's video service are low-income households.
> (b) Within 5 years of the date it began providing video service under this act and from that point forward, at least 30% of the households with access to the provider's video service are low-income households.

Mich. Comp. Laws § 484.3309(2).

The plaintiff's argument that the Cable Act requires, or at least permits franchising authorities to require, universal wiring in the franchise area is not compelled by the statutory text. There is nothing in the plain language of the statute to suggest such a requirement; instead, the statute merely requires that a decision not to provide service to an area not be based on the income of the area's residents. A cable operator would be within its rights under the language of the Cable Act to not provide cable service to one part of a franchise area because, for example, the existence of many competing cable services in the area would render the provision of service by a new operator unprofitable. Further, the FCC has rejected the plaintiff's contention that the Cable Act requires universal build-out. *See American Civil Liberties Union v. F.C.C.*, 823 F.2d 1554, 1579-80 (D.C. Cir. 1987) (The FCC concluded that "the intent of [the Cable Act's anti-discrimination provision] was to prevent the exclusion of cable service based on income and that this section does not mandate that the franchising authority require the complete wiring of the franchise area in those circumstances where such an exclusion is not based on the income status of the residents of the unwired area.") (quoting 50 Fed. Reg. at 18,647). This aspect of the plaintiff's preemption argument fails.

However, by precluding liability for violations of an anti-discrimination provision in the event that 25 or 30 percent of the households with access to a cable operator's service are low-income, the Michigan Act conflicts with the Cable Act. As the plaintiff points out,

> Comcast could actually discriminate against every low income resident in the City, as long as 30% of households anywhere in Michigan with access to its service are "low-income." Mich. Comp. Laws 484.3309(2)(b). This application of a state-wide standard, in place of a franchise-area one, clearly conflicts with the Federal Act's prohibition on income-based discrimination "of the residents of the local area in which such group resides." 47 U.S.C. § 541(a)(3).

Pl.'s Br. in Support of Mot. for Partial Summ. J. at 18. Because the Michigan Act's provision of a defense to a charge of discrimination in a franchise area would actually allow a cable operator to discriminate based on income in violation of the Cable Act, the safe harbor provisions are probably preempted by the Cable Act.

But that conflict will does not furnish a basis for relief to the City. Comcast is the incumbent cable operator, and the City has not alleged that Comcast has any obligation to wire additional areas within the service area. Nor has the City alleged that Comcast has failed to abide by the customer service or the anti-discrimination provisions in the 1985 Agreement. Nor has the City alleged that such a breach "is certainly impending." *Babbit v. United Farm Workers Nat. Union,* 442 U.S. 289, 298 (1979); *Peoples Rights Organization Inc.*, 152 F.3d at 527. Therefore, a determination of whether the Michigan Act's customer service and anti-discrimination provisions are preempted by the Cable Act is not necessary to resolve the City's breach of franchise claim, and the claim is not ripe for adjudication. There is no concrete factual context in which the Court can decide the dispute as to those provisions. The City argues that it will suffer hardship if the Court declines to adjudicate these contentions because it would be "powerless" to prevent Comcast from discriminating in the provisions of services. But, as the Sixth Circuit has explained, "'a claim is not ripe for adjudication

if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Cooley v. Granholm,* 291 F.3d 880, 883-84 (6th Cir. 2002) (quoting *Texas v. United States,* 523 U.S. 296, 300 (1998)). The plaintiff's claim is based only on the possibility that Comcast will in the future violate anti-discrimination provisions of the Cable Act. Because build-out has already occurred and the franchise negotiations deal with renewal with the incumbent cable operator, there is little likelihood that violations will take place.

D. Implied preemption

The City alleges that those provisions of the Michigan Act that are not expressly preempted by the Cable Act are impliedly preempted because they "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Fidelity Fed. Sav. and Loan Assoc.*, 458 U.S. at 153. Comcast responds that the Michigan Act promotes the purposes of the Cable Act.

> The Cable Act identifies as its goals to:
>
> (1) establish a national policy concerning cable communications;
> (2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;
> (3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;
> (4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
> (5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and
> (6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

47 U.S.C. § 521. The City contends that the Michigan Act conflicts with the first and second purposes, while the defendants contend that the Michigan Act supports the first, second, and sixth purposes of the Cable Act.

The Sixth Circuit has held that "Congress . . . sought in the Cable Act to provide a balance between respecting the needs and interests of communities and protecting cable operators against unreasonable demands." *Union CATV, Inc.*, 106 F.3d at 442. Of course, the City and Comcast represent the two sides of this balancing attempt, and therefore each party asserts that its side of the equation is the more weighty in determining whether the Michigan Act comports with the purposes of the Cable Act. However, Comcast's argument is ultimately more persuasive, as the City's cited cases differ in material ways from the present case, the existence of state-wide franchising procedures does not subvert the Cable Act's goal of creating national standards, municipalities retain a role in the franchising process under the Michigan Act, and many other states have state-wide franchising procedures and standards.

The City cites *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000). In that case, the Supreme Court found that a Massachusetts statute restricting the state's ability to purchase goods or services from companies that did business in Burma was preempted by a federal law placing sanctions on Burma. *Id.* at 366. However, that case involved foreign policy, an area in which the interest in a uniform national policy is much stronger than in the case of cable regulation. The Supreme Court in that case also put great weight on the executive's authority under the federal act to speak for the United States in the international community; no such consideration exists in this case. *Id.* at 381. That case does not support the idea that the Michigan Act's provisions directed primarily toward approval of new entrants in the cable market conflicts with the purposes of the

Cable Act. In *Qwest Broadband Services, Inc. v. City of Boulder*, 151 F. Supp. 2d 1236 (D. Col. 2001), also cited by the City, the district court invalidated a local ordinance requiring that franchise agreements be approved by a vote of taxpayers, finding that it conflicted with the goal of promoting competition between cable providers embodied in the Cable Act. *Id.* at 1244. The case does tend to demonstrate that it is possible for the Cable Act to impliedly preempt local and state laws on cable franchising, but the ordinance found to be preempted in *Qwest* bears no similarity to the Michigan Act, and thus the case does not provide support to the City's position.

The existence of a state-wide franchising procedure does not necessarily subvert the Cable Act's goal of creating a uniform national policy regarding cable communications. Indeed, the Cable Act explicitly contemplates a role for the state in regulating cable franchising. *See* 47 U.S.C. § 521(3). As Comcast points out, 19 other states have established statewide franchising procedures and standards. That tends to demonstrate that such standards and procedures do not subvert the national policy embodied in the Cable Act as a matter of course. Moreover, the Michigan Act does not entirely erase the role of municipalities in cable franchising. As noted earlier, the Michigan Act provides that local governments and cable operators may enter into voluntary agreements that include conditions from those in the uniform agreement. Mich. Comp. Laws § 484.3313 ("This act does not prohibit a local unit of government and a video service provider from entering into a voluntary franchise agreement that includes terms and conditions different than those required under this act."). Further, the Michigan Act's uniform franchise agreement includes a clause requiring cable operators "to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the franchising entity." Mich. Comp. Laws § 484.3302(3)(i). Therefore, although it might be

said that the Michigan Act tips the balance implicated in the Cable Act toward the protection of cable companies, it cannot be said that the Michigan Act is an obstacle to achieving the balance sought by Congress in passing the Cable Act where the Michigan Act provides some protection to local interests and regulation.

E. The 1985 agreement and holdover tenancy

It is undisputed that the 1985 franchise agreement expired by its own terms on February 28, 2007. It is also undisputed that Comcast withdrew from negotiations to renew the franchise, and that the last proposal came from the City, which contained conditions concerning consumer protections, anti-discrimination, and PEG channels. Under the interpretation of the Michigan Act urged by the State and approved herein by the Court, the City timely acted on Comcast's application to renew the franchise and did not approve it. Neither the City nor Comcast has pursued a contested case concerning the renewal, s*ee* 47 U.S.C. §§ 546, 555, and the parties have not successfully negotiated additional terms on a consensual basis. *See* Mich. Comp. Laws § 484.3313. Because the City responded in a timely manner, no new franchise agreement has taken effect by operation of state law. Therefore, there is no franchise agreement in place that allows Comcast to engage in cable operations in the City of Detroit.

That circumstance, the City insists, renders Comcast a holdover tenant; otherwise, Comcast would be a trespasser and would be in violation of the Cable Act and the Michigan Act, both of which require Comcast to have a franchise with the municipalities where it provides cable service. *See* 47 U.S.C. § 541(b)(1) (stating that "a cable operator may not provide cable service without a franchise"); Mich. Comp. Laws §§ 484.3303(1) (stating that "[b]efore offering video services within

the boundaries of a local unit of government the video provider shall enter into or possess a franchise agreement with the local unit of government as required by this act").

The plaintiff cites cases from California and Florida in which courts have found that a cable operator that continues to provide cable services after the expiration of its franchise is in the position of a holdover tenant and is bound by the terms of the expired franchise agreement. *Comcast of Ca. I, Inc. v. City of Walnut Creek,* 371 F. Supp. 2d 1147, 1155 (N.D. Cal. 2005); *Florida Power Corp. v. City of Winter Park*, 887 So.2d 1237, 1241 (Fla. 2004). The Michigan courts have not yet decided the precise issue of the relationship between a municipality and a cable operator when the franchise agreement has terminated and the cable operator continues to provide cable services in the municipality.

However, in determining issues of state law such as this, the Court is bound by the pronouncements of the state's highest court. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). And the Michigan Supreme Court has refused to characterize the relationship between a municipality and a franchisee who continues to operate after the franchise has expired as a holdover tenancy. In *City of Detroit v. Detroit United Ry.*, 172 Mich. 136, 137 N.W. 645 (1912), *aff'd sub nom. Detroit United Ry. v. City of Detroit*, 229 U.S. 39 (1913), the Michigan Supreme Court held that a railcar company that continued to operate in Detroit after its franchise had expired was not analogous to a tenant who has held over on its lease, as the City had argued. In so holding, the Court stated:

> The matter of defining the relations between these parties under the circumstances of this case is not without its difficulties. We think, however, that complainant in stating its contention that the relations in all respects are analogous to the relations between landlords and tenants of real estate under similar circumstances makes an impossible comparison, for the reason that similar circumstances could not arise between an ordinary landlord and tenant. In the instant case the municipality, which

> has but a circumscribed interest in its streets, has granted the right to defendant to occupy certain portions of its public streets for the purpose of maintaining and operating thereon a street railway, under certain terms and conditions accepted by it, for a certain length of time, which has expired. This presents a relation which cannot be described as a tenancy. Defendant's rights under the franchises terminated by their express provisions, and, because of the interest of a municipality in and to its streets, no such relation as a tenancy has been created or can exist.

Id. at 154-55, 653. The Supreme Court concluded instead that "the contractual relations between these parties ended upon the expiration of the franchises, and all rights in the defendant company to occupy the city streets, and maintain and operate a street railway thereon, then terminated, and defendant thereafter became a trespasser." *Id.* at 158, 654. That decision has never been overturned, was affirmed by the United States Supreme Court, and was cited by the Michigan Court of Appeals as recently as 2004. *See TCG Detroit v. City of Dearborn*, 261 Mich. App. 69, 87, 680 N.W.2d 24, 35 (2004). The Court must abide by the Michigan Supreme Court's determination of state law on this issue.

In *City of Detroit,* Michigan Supreme Court found that the city could compel the defendant to cease operating in the City and to remove its tracks from the streets. *Detroit United Ry. v. City of Detroit*, 229 U.S. at 43. Based on that precedent, the Court could find that the City may compel Comcast to cease operating within its boundaries. However, in *City of Detroit*, the Supreme Court also based its remedial decision on the fact that the plaintiff was attempting to impose fees unilaterally on the defendant in excess of those contemplated in the original franchise agreement. *City of Detroit*, 172 Mich. at 158-59, 137 N.W. at 654. It is not clear how the Court would have ruled had the plaintiff merely attempted to enforce the original terms of the agreement.

The City argues that because Comcast has continued to operate in the City without an agreement, it has enjoyed a windfall and been unjustly enriched to the detriment of the City.

Therefore, the City contends, the Court could imply a contract at law to avoid an inequitable result. Under Michigan law as described by the Michigan Supreme Court, a court may imply a contract at law where the plaintiff can show that the defendant has received a benefit from the plaintiff and it would be unjust to allow the defendant to retain that benefit. *Kammer Asphalt Paving Co., Inc. v. East China Tp. Schools*, 443 Mich. 176, 185, 504 N.W.2d 635, 640 (1993).

Neither defendant has addressed the City's remedial arguments, and the Court believes that additional briefing would assist in the determination of an appropriate remedy. Therefore, the Court will direct the parties to file briefs addressing that issue.

IV. Conclusion

The Court finds that it does not have subject matter jurisdiction to adjudicate the City's claims that the customer service, anti-discrimination , universal build-out, and safe harbor provisions of the Michigan Act are preempted by federal law because of lack of standing and ripeness. The Court does have jurisdiction to decide whether the renewal and modification procedures in the Michigan Act are preempted, and whether the Michigan Act can curtail the enforcement of existing PEG requirements in the franchise agreement. The Court finds that although the Michigan Act's renewal provisions are not preempted by the Cable Act, the provisions that purport to modify existing franchise agreements by operation of law to curtail a municipality's authority to enforce PEG channel requirements in existing agreements are expressly preempted by the Cable Act. The Court also finds that the Michigan Act does not prevent municipalities from refusing to approve franchise renewal proposals from cable operators as long as the municipality acts on the proposal within the 30-day limit set forth in the Act. The Court determines that the undisputed facts establish that the City timely rejected Comcast's renewal proposal by proposing allowable additional

conditions, and because Comcast thereafter withdrew from negotiations, no new franchise agreement was established. Because Michigan law will not permit Comcast to be treated as a holdover tenant, Comcast must be considered a trespasser.

Accordingly, it is **ORDERED** that the motions for partial summary judgment filed by the plaintiff, defendant Comcast, and intervening defendant State of Michigan [dkt. #41, 59, 63] are **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that Comcast is found to be a trespasser in the public spaces and rights-of-way within the City of Detroit in which it has placed its facilities and equipment.

It is further **ORDERED** that the parties must file briefs addressing an appropriate remedy for the trespass and failure to renew the franchise agreement for provision of cable services **on or before July 31, 2012**. Briefs must conform to E.D. Mich LR 7.1(d) and may not may not exceed (10) ten pages.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

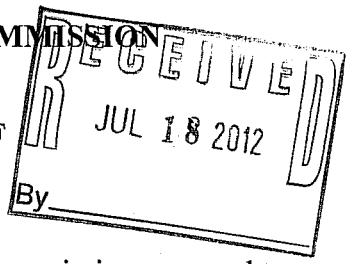
Dated: July 10, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 10, 2012.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION



NOTICE OF HEARING
FOR THE ELECTRIC CUSTOMERS OF
CONSUMERS ENERGY COMPANY
CASE NO. U-16655

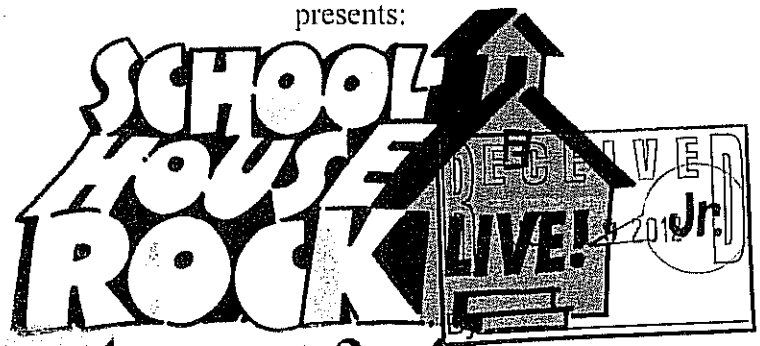
- Consumers Energy Company seeks Michigan Public Service Commission approval to reconcile its renewable energy plan costs for the period of January 1, 2011 through December 31, 2011.
- The information below describes how a person may participate in this case.
- You may call or write Consumers Energy Company, One Energy Plaza, Jackson, Michigan 49201, (800) 477-5050 for a free copy of its application. Any person may review the documents at the offices of Consumers Energy Company.
- A public hearing will be held:

DATE/TIME:	July 30, 2012, at 9:00 a.m. This hearing will be a prehearing conference to set future hearing dates and decide other procedural matters.
BEFORE:	Administrative Law Judge Mark D. Eyster
LOCATION:	Michigan Public Service Commission 6545 Mercantile Way, Suite 7 Lansing, Michigan **The Mercantile Way building sustained flood damage and remains closed until further notice. Please consult the Michigan Public Service Commission website at: www.michigan.gov/mpsc for updates on hearing locations or call 517.241.6060.**
PARTICIPATION:	Any interested person may attend and participate. The hearing site is accessible, including handicapped parking. Persons needing any accommodation to participate should contact the Commission's Executive Secretary at (517) 241-6160 in advance to request mobility, visual, hearing or other assistance.

The Michigan Public Service Commission (Commission) will hold a public hearing to consider Consumers Energy Company's (Consumers Energy) June 29, 2012 application for approval to reconcile its Renewable Energy Plan (REP) costs for the period of January 1, 2011 through December 31, 2011. Consumers Energy seeks Commission's approval to: a) determine that the Company's 2011 REP reconciliation is reasonable and prudent and meets all relevant requirements under 2008 Public Act 295; b) reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the Company's plan for compliance; c) establish a price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable

Swartz Creek Center Stage

presents:



August 3, 4, 8:00pm

August 5, 3:00pm

Mary Crapo School Auditorium
8197 Miller Rd. Swartz Creek
Tickets $8 Info: 810-591-4352

CROWN CASTLE

July 6, 2012

City of Swartz Creek
8083 Civic Drive
Swartz Creek, MI 48473

Re: Cell Tower Located at 8100 B-Civic Drive, Swartz Creek, MI (MI034399)

Dear Paul Bueche,

We understand that your community has a ground lease for a wireless communications tower on one or more of your properties. Have you ever considered exchanging that lease for a large cash payment to invest in the infrastructure needs of your community? Or maybe considered a sale but wanted to make sure your staff was working with the right company to accomplish the sale?

Crown Castle (NYSE: CCI) was founded in 1994 and is one of the country's largest owners and operators of communications towers in the United States. Crown is a nationwide Fortune 500 Company with a local representative in your area to help with any issues at the tower site. Crown has completed 12,000 Real Estate Transactions across the United States. Your community should consider joining the growing list of other cities, townships, counties and schools across the nation that have partnered with Crown to manage cell tower sites or sell their leases for a cash payout program.

About how much would your community be offered? The Local Real Estate Portfolio Manager will use the annual rent amount to calculate the market value of the communications tower easement. For example, if monthly rental revenue is approximately $1200: Consider a lump sum payment option of over $165,000, or if periodic payments over 10 to 15 years is preferred a purchase price between 225,000 to 300,000 can be achieved. Further, consider our ***Price Match Plus*** program for any municipality or school district already working with a buyer for its ground lease at a cell site location: Crown Castle will match and in most cases improve the purchase price! Your community has now maximized the value of its cell tower assets with the added benefit in Crown Castle of a credible owner/manager of the tower site.

Let Crown Castle help you explore the advantages of a large cash payment or installment payments that allow for cash now or cash over time. Call today at 1-866-528-7916 to further discuss your community's options or e-mail us at lease@lyleco.com. Once we receive your call, our local Real Estate agent will contact your office. Our professionals look forward to helping you serve the financial needs of your community while gaining a better understanding of the tower lease industry, regardless of whether we complete a transaction.

Sincerely,

Lisa Jones
Real Estate Portfolio Manager for The Lyle Company
www.lyleco.com