

MARION TOWNSHIP
BOARD OF TRUSTEES
REGULAR MEETING
Thursday, March 26, 2020
7:30 p.m.

Call to Order
Pledge of Allegiance
Members Present/Members Absent
Call to the Public

- 1) Approval of Agenda
- 2) Consent Agenda
 - a. Approval of March 12, 2020 Regular Meeting Minutes
- 3) Howell Sewer System
- 4) Gorski Hauling Proposal
- 5) Short Term Rentals
- 6) Carlisle/Wortman Associates, Inc Engagement Letter
- 7) Township Roads
- 8) Township Parking Lot

Correspondence and Updates

Call to the Public
Adjournment

Reminder: Next Board Packet will be ready after 3pm on Thursday, April 2, 2020.

**MARION TOWNSHIP
BOARD OF TRUSTEES
REGULAR MEETING
MARCH 12, 2020**

MEMBERS PRESENT: Les Andersen, Tammy Beal, Duane Stokes, Greg Durbin, Scott Lloyd, Dan Lowe, and Bob Hanvey

MEMBERS ABSENT: None

OTHERS PRESENT: Phil Westmoreland, Spicer

CALL TO ORDER

Bob Hanvey called the meeting to order at 7:30 pm.

PLEDGE OF ALLEGIANCE

BOARD MEMBERS PRESENT

The board members introduced themselves.

CALL TO THE PUBLIC

Nancy and Roger Lyke introduced themselves and said their daughter, Kristina Lyke (R), who is running for election to the U.S. House to represent Michigan's 8th Congressional District in the August 4th primary

APPROVAL OF AGENDA

Items #9—Engine Braking, #10—Esper Lease, #11—Crystalwood Roads, and #12—Site Plan Landscaping were added to the agenda. Duane Stokes motioned to approve the agenda as amended. Les Andersen seconded. **Motion carried.**

CONSENT AGENDA

Greg Durbin motioned to approve the consent agenda as presented. Les Andersen seconded. **Motion carried.**

HOWELL SEWER REPRESENTATIVES

The board members reviewed the current draft of the proposed agreement; Dennis Perkins, attorney for the City of Howell, will incorporate the changes and provide the board with a final draft for review and approval at the next meeting. The Howell City Council will vote on March 23. Bob Hanvey has asked the township attorney to review and comment by Monday, March 16.

Mike Arens, CIRAB representative, Erv Suida and Mike Spittler from the City of Howell were present to answer any questions the board members may have. Mr. Arens said the existing agreement doesn't mention non-capacity related improvements and the essence of the new agreement is the cost sharing. A spreadsheet showing the break down of costs and an amortization schedule were passed out.

Dan Lowe asked about the life span of these improvements; Mr. Ahrens said not less than the bond payment schedule.

GENERAL FUND BUDGET TO ACTUAL REPORT

Bob Hanvey passed out the budget to actual report; line item 6446-806—Road Maintenance will need to be changed. He will update and present at the next meeting.

DUST CONTROL BIDS

Les Andersen motioned to select Chloride Solutions for 2020 dust control and authorize the clerk to sign the contract. Scott Lloyd seconded. Motion carried. Tammy Beal will talk with Tim Johnson about testing the product that's being used.

ROADS

An email between Phil Westmoreland and Jodie Tedesco of the LCRC was included in the packet. The plan is for maintenance on Burkhart Road in 2021. The estimate for wedge and overlay and base repair on Schafer Road is \$450,000, with the LCRC contributing 30%, up to \$100,000. Dan Lowe said he would rather fix the bad spots and chip seal it. Mr. Westmoreland estimated the cost for that to be about \$165,000.

Dan Lowe motioned to patch the bad areas and have two chip seal applications on Schafer Road. Scott Lloyd seconded. Discussion: Les Andersen said he would vote no because the board already approved the wedge and overlay. Tammy Beal asked how long the wedge and overlay would last; Mr. Westmoreland estimated 10 years. Roll call vote: Lowe—yes; Lloyd—yes; Beal—no; Hanvey—yes; Durbin—yes; Andersen—no; Stokes—no. **Motion carried 4-3.**

Scott Lloyd said the township should consider gravel for some of the dirt roads. Tammy Beal suggested Cedar Lake Road south of Coon Lake Road, Francis and/or Keddle. Dan Lowe asked the status of fixing the hill on Cedar Lake Road near Love's Creek; Mr. Westmoreland said he's finalizing the estimate.

PARKING LOT REPAIR

Phil Westmoreland will provide the board with estimates for this project. Dan Lowe suggested that he and Phil shoot the grades to figure out where the water's going.

HALL PAINTING

Les Andersen motioned to accept the bid from Beal Painting for \$1875. Scott Lloyd seconded. Roll call vote: Stokes, Durbin, Hanvey, Lloyd, Beal, Andersen, Lowe—all yes. **Motion carried 7-0.**

ENGINE BRAKING

A proposed sign is included in the packet. Mr. Hanvey said the sheriff's department has said the township would need a contract with them for enforcement, not just for engine braking, but any nuisance-related situations. The cost is \$65 per hour with a four-hour minimum.

Les Andersen motioned to approve funds for the signs, as presented, and Bob Hanvey and Greg Durbin will meet with the enforcement people for additional information. Dan Lowe seconded. Roll call vote: Beal, Andersen, Lowe, Durbin, Stokes, Hanvey, Lloyd—all yes. **Motion carried 7-0.**

ESPER LEASE

Greg Durbin motioned to authorize this agreement with the same provisions as last year if the property is not purchased. Duane Stokes seconded. Discussion: Les Andersen said it should be clear that the township and/or buyer will not pay for crop damages. **Motion carried.**

Les Andersen motioned to extend the meeting beyond 9:30 pm. Scott Lloyd seconded. **Motion carried.**

CRYSTALWOOD ROADS

There is a meeting scheduled for the Crystalwood HOA on April 1, 7 pm at the township hall, to discuss public versus private roads and SAD options. The Crystalwood Estates HOA can either have the company doing Rick Elkow's roads do the work, get bids on their own or the Township engineer can prepare a bid packet and advertise for bids.

SITE PLAN LANDSCAPING

Dan Lowe said no one is checking the landscape plans on the township's behalf; for example, Crystalwood and Mugg and Bopps. He said the eight-foot trees should have been planted in Crystalwood in 2000; he feels that they should now have to plant 12 ft. trees. He also said the berms in Marion Oaks should be done before any building takes place, and certificates of occupancy should be withheld until the landscaping is done or an adequate amount is deposited in an escrow account. Bob Hanvey said he will discuss with the attorney and Bill Rogers to see how Genoa Township handles similar issues.

CORRESPONDENCE & UPDATES

The June trial date for the wedding barn situation has been postponed for 90 days.

Tammy Beal provided results from the March 10 election.

CALL TO THE PUBLIC

Bruce Powelson, 3466 Pingree, said he feels that the clerk should have abstained from voting on the hall painting item.

ADJOURNMENT

Duane Stokes motioned to adjourn at 10 pm. Les Andersen seconded. **Motion carried.**

Submitted by: S. Longstreet

Tammy L. Beal, Township Clerk Date

Robert W. Hanvey, Township Supervisor Date

MEMO

To: Marion Township Board
From: Bob Hanvey
Subject: Wastewater Agreement with Howell City
Date: March 26, 2020

Attached is a copy of the most recent Wastewater Agreement and a list of requested changes to the agreement. This list was not sent to them until March 18, 2020. So as of packet time I have not had a response. If I get a response by meeting time it will be distributed then.

As of packet time we have not heard if the schedule for submission to EGLE has been changed.

**WASTEWATER TREATMENT PLANT UPGRADE
AND TREATMENT SERVICE AGREEMENT**

THIS AGREEMENT is entered into by and between the CITY OF HOWELL, MICHIGAN, a Michigan Home rule city with offices at 611 E. Grand River Avenue, Howell, Michigan 48843 (hereinafter the “City”), and the TOWNSHIP OF MARION, COUNTY OF LIVINGSTON, a Michigan Municipal Corporation with offices at 2877 Coon Lake Road, Howell, MI 48843 (hereinafter the “Township”).

WHEREAS,

- A. The City owns and operates a wastewater treatment system (the “Wastewater Treatment System”) consisting of the City of Howell Wastewater Treatment Plant located at 1191 South Michigan Avenue, Howell, Michigan (the “City WWTP) and a sewage collection system (the “City Collection System”).
- B. The City WWTP treats the wastewater discharges from the entire City of Howell as well as portions of the Township. All collected wastewater is received at the City WWTP, treated, and continuously discharged to the Marion-Genoa Drain as authorized by the City WWTP’s National Pollution Discharge Elimination System (“NPDES”) permit.
- C. The City WWTP has a permitted annual average daily flow rating of 2.45 MGD and is currently operating at an average daily flow rate of approximately 1.40 MGD.
- D. The City is under a contractual obligation pursuant to the “City of Howell-Marion Township Wastewater Treatment Contract” (the “Howell-Marion Township WTC”) dated June 30, 1997, as amended on October 8, 2001 and March 7, 2005, to provide wastewater treatment service to Township at a rate of 0.884 MGD, or approximately 36.08% of the City WWTP’s rated 2.45 MGD average daily flow. Flow from The Township currently accounts for only about 12.14% of the daily average influent flow of 1.40 MGD. However, it is expected that flows from the Township to the City WWTP will increase over time as the Township’s sewer system is built out to eventually reach the full contracted capacity. A copy of all agreements dated June 30, 1997, October 8, 2001 and March 7, 2005 are all attached, in seriatim as Exhibit A.
- E. The WWTP was upgraded in 2001 pursuant to the Howell-Marion Township WTC. Since then, many of its components have become obsolete, deteriorated or failing and are in need of replacement or rehabilitation. Also, some existing WWTP processes are deficient and in need of upgrade, including headworks (due to inadequate capacity during wet weather high flows) and sludge management (due to severe limitations on land application of sludge). These needs are detailed in prior-year and current project plans (dated March 2010 and updated October 2015, August 2016 and April 2019), as developed at the City’s request by its consulting engineer, Hubbell, Roth & Clark, Inc. (“HRC”). Said replacements, rehabilitation or improvements are included in the City’s Asset Management Plan and are

necessary for the WWTP to provide proper sewage treatment, and to remain compliant with its NPDES Permit.

- F. Insufficient funds exist in the City's WWTP Capital Replacement Account to pay for said replacement, rehabilitation or improvement work. Further, the Howell-Marion Township WTC does not address the allocation of costs between the parties for funding of major replacement, rehabilitation or non-capacity-related improvement work if sufficient funds do not exist in Howell's WWTP Capital Replacement Account. These circumstances obligate the parties hereto to negotiate a funding agreement separate from the Howell-Marion Township WTC for allocation of costs between the parties hereto for said work, if it is to be undertaken.
- G. The parties hereto recognize that failure to address needed replacements, rehabilitation or improvements may cause major adverse impacts to the parties hereto and their customers, in the event of WWTP's failure or violation of its NPDES Permit.
- H. ~~On or about () date),~~ **Over the course of the last several years,** the Pepsi Bottling Group, LLC of Howell, MI (Pepsi), the City's largest nondomestic wastewater customer, began discussions with the City regarding a proposal for Pepsi to discontinue its on-site biological pretreatment of process wastewater (which discharges into the City Collection System), in exchange for Pepsi's funding WWTP upgrades needed to treat Pepsi's un-pretreated wastewater, and to provide other WWTP improvements.
- I. Said WWTP upgrades and improvements will be necessary to treat the increased waste strength of Pepsi's un-pretreated waste and to assure that WWTP capacity will not be impaired, in particular with respect to the City's wastewater treatment capacity obligations under the Howell-Marion Township WTC. Upgrades will include replacing the existing activated sludge process with a high-efficiency biological nutrient removal process, and improving the aeration and sludge dewatering systems. No change of wastewater flow rate will result from acceptance of Pepsi's un-pretreated waste from Pepsi. The current HRC project plan includes said Pepsi proposal.
- J. The parties hereto recognize that funding from Pepsi in the amount proposed will help pay for needed WWTP improvements (particularly including solids dewatering system and other work) that must otherwise be funded solely by the parties hereto. Further, these improvements will provide WWTP operational efficiencies that will result in long-term economic benefits to the parties hereto and their customers, **required replacement and rehabilitation based upon the City's Asset Management Plan. All improvements will allow the City to provide proper treatment of the City's WWTP discharge to the Marion-Genoa drain.**
- K. The Capital Improvement and Rate Advisory Board (CIRAB) is authorized by the Howell-Marion Township WTC and includes representatives of the parties hereto. The CIRAB has considered the HRC project plans throughout their development, has confirmed the

need for the work under the project plan, and has approved a cost-sharing proposal for project costs between the parties on March 18, 2019

- L. The current Project Plan's selected alternative recommended a two-year, single-phase project including improvements to the City WWTP's existing primary tanks, final clarifiers, and aeration tanks; construction of a new aeration tank and conversion to biological nutrient removal; expansion of the UV disinfection system and headworks building; solids dewatering improvements including the construction of a new solids dewatering building; and general improvements to the infrastructure and facilities at the City WWTP. All of the improvements and upgrades as recommended by the Project Plan would be made on the existing location of the City WWTP. (No improvements to the existing City Collection System are currently planned.)
- M. As estimated by the Project Plan, the total estimated capital costs of the Improvements for the selected alternative would be \$14,660,700. The proposed or estimated cost sharing for the capital costs as provided by the Project Plan was is as follows:

Pepsi contribution - \$4,000,000.00 (fixed).
Township contribution 32.46% of the remaining \$10,660,700.00 or \$3,460,463.00
City contribution 67.54% of the remaining \$10,660,700.00 or \$7,200,237.00

$(\$4,000,000.00 + \$3,460,463.00 + \$7,200,237.00$
 $= \$14,660,700)$

The parties agree that the costs set forth in this Paragraph M are estimates only, and that the total actual costs of the Improvements could increase or decrease, based upon the results of final competitive bidding for the Project. Actual costs to the parties will be based on the percentages given in this Paragraph M.

- N. The Project Plan recommended that the City submit the Project Plan to the State of Michigan in application for a low-interest loan (expected to be approximately 2.50% or less) under the State Revolving Fund (SRF)/Strategic Water Quality Initiatives Fund (SWQIF) Loan Program.
- O. On May 20, 2019, the City adopted "Notice of Intent Resolution No. 19-13, Sewage Disposal System Revenue Bonds, Series 2019 (State Revolving Fund Project) for an amount not to exceed \$16.5 million."
- P. On June 10, 2019, the City formally adopted by resolution the Project Plan and agreed to implement the selected alternative (Resolution No. 19-15). Resolution No. 19-15 also authorized submittal of the Project Plan as the first step in applying to the State for a State Revolving Fund Loan to assist in the implementation of the selected alternative.

- Q. A copy of the Project Plan as adopted by the City pursuant to Resolution No. 19-15 is attached to this Agreement as Exhibit B.
- R. The Project Plan was submitted to the State before the July 1, 2019 deadline as required to be on the project priority list for the fiscal year 2020 (October 1, 2019 to September 30, 2020).
- S. If the SRF loan applied for by the City is approved, the City would repay the State of Michigan the amounts obtained through the SRF over a period of 20 years.
- T. In a nonbinding letter of intent from Pepsi to the City dated July 21, 2017, Pepsi indicated it desired to negotiate and enter into with the City a definitive wastewater treatment service agreement similar to the terms outlined in the letter of intent, including payment of capital costs to retrofit the City WWTP to accept and treat a total of 3,500 lbs/day of additional BOD5 loading, payment schedules, and other details related to its proposal to discontinue pretreatment of its process wastewater discharged to the City WWTP as referenced above in this Agreement.
- U. The Howell-Marion Township WTC provides that the Township is responsible for paying a portion of the costs of any improvements at the WWTP.
- V. There will also be Design Engineering Costs associated with the City WWTP Improvements as recommended by the Project Plan. On June 24, 2019, the City Council accepted the Design Engineering proposal prepared by HRC, dated May 31, 2019 (“HRC DE Proposal”). The HRC DE Proposal included a Design Budget of \$1,113,844.00. The City Council also approved on June 24, 2019 a cost sharing approach for the Design Budget to be paid upfront and not included in the SRF loan (but eligible to be reimbursed from ~~bond~~ **SRF loan** proceeds), as follows:
- Pepsi’s Share of Design Engineering Costs 27.29% (\$303,968.00)
Township’s Share of Design Engineering Costs 23.60% (\$262,867.00)
City’s Share of Design Engineering Costs 49.11% (\$547,009.00)
- $= \$302,968 + \$262,867 + \$547,009 = \$1,113,844.00$
- The costs, above, will not be financed through the Design Budget but will be paid in cash and otherwise reimbursed from bond proceeds once received by the City from the State of Michigan.
- W. The City and the Township are entering this Agreement to set forth the terms, conditions, and requirements applicable to the payment by the Township of the Township’s share of the Capital Costs, and Design Engineering Costs and certain out of pocket expenses for the Improvements to the City WWTP and associated with the provision by the City of

Wastewater Treatment Services for discharges from the Township to the Wastewater Treatment System.

- X. The terms, conditions, and requirements applicable to the payment by Pepsi's of Pepsi's share of the Capital Costs and Design Engineering Costs for the Improvements to the City WWTP associated with Pepsi's discharges to the City WWTP are covered by a separate agreement entered into between the City and Pepsi.

TERMS, CONDITIONS, AND REQUIREMENTS

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement and the terms, conditions, and requirements set forth below, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms are defined to mean as follows:

“Applicable Legal Requirements” means all applicable local, state, and federal laws, regulations, and rules applicable to wastewater characteristics, collection, treatment service, disposal, pretreatment, and control including, but not limited to, the City Sewer Use Ordinance; the terms, conditions, and requirements of any notice, order, permit, decision or determination promulgated, issued or made under the City Sewer Use Ordinance; the WWTP's NPDES Permit; the Federal Water Pollution Control Act (the “Clean Water Act”), as amended, 33 USC 1251, et seq.; the General Pretreatment Regulations (40 CFR Part 403); Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCL §§ 324.3101 et seq., as amended (“Water Resources Protection”); and the rules, Michigan Administrative Code, R 323.2301 et seq., as amended, promulgated pursuant to Sections 3103, 3106, and 3109 of Part 31 of Act 451 of the Public Acts of Michigan of 1994, as amended (“Pretreatment”); final orders of any state or federal courts of competent jurisdiction; and final orders or determinations of local, state, or federal agencies or officials of competent jurisdiction.

“As amended” means as amended from time-to-time.

“BOD5” means the quantity of dissolved oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in 5 days at 20 degrees C., expressed in terms of weight and concentration (milligrams per liter).

“Capital Costs” means the costs to purchase and construct the City WWTP Improvements.

“City” means the City of Howell, Livingston County, Michigan, and the City's designated representatives as authorized by law.

“City Council” means the City Council of the City of Howell.

“City Sewer Use Ordinance” means Chapter 1042 (“Sewers”) and Chapter 1043 (“Industrial Wastewater Pretreatment Regulations”) of Title 4 (“Utilities”) of Part Ten (“Streets, Utilities and Public Services Code”) of the Howell City Code, as amended.

“City Collection System” means all of the sewers, force mains, intercepting sewers, pipes and other conveyances, lift stations, and pumps, along with any metering devices and other equipment and facilities, owned, operated, maintained, and controlled by the City and that are primarily installed to receive discharges of wastewater and pollutants from users for collection and conveyance to the City WWTP.

“City WWTP” means City of Howell Wastewater Treatment Plant located at 1191 South Michigan Avenue, Howell, Michigan. The City WWTP is owned, operated, and controlled by the City, and includes all devices, processes, facilities and systems used in the storage, treatment, recycling or reclamation of wastewater, sewage sludge, and biosolids, exclusive of the City Collection System.

“Design Budget” means the budget for design of the Improvements as set forth in the HRC DE Proposal.

“Design Engineering Costs” means the costs to design the City WWTP Improvements as set forth in the Design Budget of the HRC DE Proposal. The Design Engineering Costs are a part of, and not additional to, the total capital costs of the Improvements for the selected alternative in the amount of \$14,660,700 and are eligible to be reimbursed from SRF bond proceeds.

“EGLE” means Michigan Department of Environment, Great Lakes, and Energy. EGLE was formally known as the Michigan Department of Environmental Quality (MDEQ).

“Force Majeure” is defined as an occurrence or nonoccurrence arising from causes beyond the reasonable control of and without the fault of the City, and which could not be avoided or overcome by the City’s exercise of reasonable due diligence, including, but not limited to, acts of God, fire, explosion, flood, earthquake, and other natural disasters or extreme acts of nature, strikes, work stoppages, civil unrest, terrorism, war, rebellion, riot, acts of civil or military authority, acts of vandalism or other violence.

“Good Utility Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of comparable publicly owned treatment works systems during the relevant time period, or other practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with reliability, safety, expedition, Applicable Legal Requirements, and at reasonable cost; the term Good Utility Practices is not intended to be limited to the optimum practices, methods or acts to the

exclusion of all others, but rather to constitute a spectrum of acceptable practices, methods or acts generally accepted by comparable publicly owned treatment works systems.

“HRC DE Proposal” means Design Engineering proposal prepared by HRC, dated May 31, 2019, approved by the City on June 24, 2019. A copy of the HRC DE Proposal is attached to this Agreement as Exhibit B.

“Improvements” means the improvements to the City WWTP as specifically described in the Project Plan, including but not limited to improvements to existing primary tanks, final clarifiers, and aeration tanks; construction of a new aeration tank and blower building; expansion of the UV disinfection system and headworks building; solids dewatering improvements including the construction of a new solids dewatering building; and general improvements to the infrastructure and facilities at the City WWTP.

“lbs/day” means pounds per day.

“MAHL” means maximum allowable headworks loading. It is the estimated maximum loading of a pollutant that can be received at a wastewater treatment plant’s headworks without causing pass through or interference, as determined by a MAHL study conducted by a qualified engineer and, to the extent required by Applicable Legal Requirements, accepted and/or approved by EGLE.

“MGD” means million gallons per day.

“Party” means the City or the Township, individually.

“Parties” means the City and the Township, collectively.

“Township” means Marion Township, Livingston County, Michigan, and the Township’s designated representatives as authorized by law.

“Wastewater Treatment Service Capacity” means the ability of the Wastewater Treatment System, as determined by the City, to accept and treat Wastewater (i.e., to provide Wastewater Treatment Service), expressed in terms of flow and/or strength consistent with the Wastewater Treatment System’s design and condition, and in compliance with Applicable Legal Requirements and the terms, conditions, and requirements of this Agreement.

“Wastewater Treatment System” means the complete wastewater disposal system and treatment works, including all portions thereof that are owned, operated, and controlled by the City including the City WWTP and the City Collection System).

2. UNDERTAKING

A. The City hereby agrees to construct the Improvements to the City WWTP, provide continuing Wastewater Treatment Service for the Township’s discharges to the Wastewater Treatment System, and to perform the other terms, conditions, and obligations as provided by this Agreement. The Township agrees to pay its share of the Capital Costs and Design Engineering Costs for the Improvements to the City WWTP, and to perform the other terms, conditions, and requirements as provided by this Agreement.

B. All actions undertaken by the City and by the Township in meeting the terms, conditions, and requirements set forth in this Agreement shall be performed in compliance with Good Utility Practices and Applicable Legal Requirements, whether or not so specifically stated in connection with a specific term, condition, or requirement.

3. CITY WWTP IMPROVEMENTS TO BE CONSTRUCTED

The City agrees to construct the City WWTP capital improvements (the “Improvements”) in accordance with the terms, conditions, and requirements of this Agreement.

4. PAYMENT FOR CAPITAL IMPROVEMENTS

A. The Township shall pay to the City a capital improvement cost of 32.46% of the entire project cost less the Pepsi contribution. Currently the total project cost is estimated at \$14,660,700 and the Pepsi contribution is \$4,000,000.00, so the remainder is \$10,660,700.00 and the Township’s estimated portion is \$3,460,463. Within 30 days after the closing on the SRF loan, the City will provide the Township with a schedule of debt service payments on the SRF loan. The Township shall be obligated to pay its share of the debt service payment to the City 30 days prior to each payment date based on the agreed percentage. The loan payment will be invoiced to the Township by the City and based on the agreed percentage of the total amount. The Township will have 14 days to pay the City its portion. A 2% penalty will be added to the amount due after the payment due date and for each month after.

B. The Township shall also pay 32.46% of the following costs associated with obtaining the SRF loan. Upon execution of this agreement the Township will be invoiced for 32.46% of these costs. Currently those costs are;

SRF Project Plan - Hubbell , Roth & Clark- \$30,000.00

Public Hearing Press release – Livingston Daily - \$292.50

Court reporter – Moretti Production Group - \$443.78

Total \$30,736.28

Township to pay 32.46% of \$30,736.28. 32.46% amounts to \$9,977.000.

C. Upon execution of this agreement which shall include the Townships full commitment to participating in the SRF loan and the SRF loan costs, and the payment of all current

costs up to date, the Township shall be eligible to receive any debt forgiveness issued by the state. The Township shall receive forgiveness based upon the agreed percentage for the cost to construct the project, at 32.46%.

D. The Township shall pay all installments as required by the loan terms and conditions. However, if the Township chooses to pre-pay any or all of the loan, such pre-payment shall be allowed without penalty so long as all interest that would have accrued during the entire loan payment period is also paid in full.

E. All payments made by the Township as provided by this Paragraph 4 shall be by check made payable to the City Treasurer and delivered to the City Treasurer's office at 611 E. Grand River, Howell, Michigan.

F. Notwithstanding any provision of this Agreement to the contrary, the Township shall not be obligated nor have any duty to discharge any wastewater into the City's Wastewater Treatment System during the effective term of this Agreement. However, whether or not the Township continues to discharge any wastewater into the Wastewater Treatment System, the Township shall remain obligated to fully and timely pay all amounts for Capital Costs as required by this Agreement.

5. PAYMENT OF TOWNSHIP'S SHARE OF DESIGN ENGINEERING COSTS

A. The HRC Design Engineering Proposal approved by the City includes a Design Budget of \$1,113,844.00 (not to be exceeded without the City's prior approval).

B. The cost sharing approach for the Design Budget approved by the City is as follows:

Pepsi's Share of Design Engineering Costs 27.29% (\$303,968.00)
Township's Share of Design Engineering Costs 23.60% (\$262,867.00)
City's Share of Design Engineering Costs 49.11% (\$547,009.00)

(\$303,968.00 + \$262,867.00 + \$547,009.00 = \$1,113,844.00)

The costs, above, will not be financed through the SRF Loan but will be paid in cash.

C. The Township agrees to pay its 23.60% share of the Design Engineering Costs in the amount of \$262,867.00. The Township shall be invoiced 23.60% of each invoice for Design Engineering Costs. Additionally, upon signature of this Agreement, the Township shall be invoiced for all accrued design engineering costs to the date of this Agreement.

D. This amount shall be paid by check made payable to the City Treasurer and delivered to the City Treasurer's office at 611 E. Grand River, Howell, Michigan.

E. All payments by the Township to the City under this Paragraph 5 will be invoiced to the Township by the City and based on the agreed percentage of the total amount. The Township will have 14 days to pay the City its portion. A penalty of 2% of the amount due will be assessed for each additional month, or part thereof, that any amount remains unpaid.

6. COSTS – IN GENERAL.

A. Pepsi's share of the \$14,660,700.00 capital costs of the Improvements for the selected alternative as estimated by the Project Plan is fixed at \$4,000,000.00 pursuant to the agreement between Pepsi and the City.

1. If the total capital costs of the Improvements for the selected alternative as estimated by the Project Plan ultimately exceed \$14,660,700.00, Pepsi's fixed share of those costs (\$4,000,000 plus interest) shall not increase Pepsi's Total Fixed Amount and any costs for the Improvements in excess of \$14,660,700.00 shall be shared by the City and the Township as provided by this agreement.

2. If the total capital costs of the Improvements for the selected alternative as estimated by the Project Plan are ultimately less than \$14,660,700.00, the savings shall be shared by the City and the Township at the agreed upon percentages.

B. Notwithstanding Paragraph 6(A), if there are capital costs for improvements to the City WWTP to pay for improvements that are different than or in addition to the Improvements for the selected alternative as provided by the Project Plan, and such different or additional improvements are determined necessary by the City to provide Wastewater Treatment Service to Pepsi, Pepsi's obligation to pay for any additional costs associated with such different or additional improvements shall be as provided by separate agreement negotiated between the City and Pepsi.

C. Notwithstanding Paragraph 6(A), if improvements different than or additional to the Improvements that are provided for by this Agreement are subsequently made to the City Wastewater Treatment System at Pepsi's request to meet Pepsi's specific Wastewater Treatment Service needs beyond the BOD5 maximum loading limits as provided by Paragraph 8(A) of this Agreement, those additional improvements shall, to that extent, be paid for solely by Pepsi.

D. Pursuant to a portion of Exhibit A, above, that being the Agreement of October 8, 2001, Page 10, paragraph 13, this agreement herein is not assignable by the Township without written consent from the City nor is this agreement assignable by the City without the written consent from the Township.

7. OWNERSHIP, ADMINISTRATION, AND OPERATION AND MAINTENANCE OF WASTEWATER TREATMENT SYSTEM

A. The City shall own the Wastewater Treatment System and shall be the permittee of the NPDES Permit issued with respect to the Wastewater Treatment System.

B. The City shall administer the Wastewater Treatment System and shall make all rate making, policy setting, and Wastewater Treatment Service Capacity allocation decisions applicable to the Wastewater Treatment System in accordance with Applicable Legal Requirements.

C. The City shall operate and maintain the Wastewater Treatment System in accordance and compliance with Applicable Legal Requirements.

D. Nothing in this Agreement is intended to, nor shall this anything in this Agreement be construed to, transfer or affect in any way the City's ownership, operation, or control of the Wastewater Treatment System (or any portion thereof), the Wastewater Treatment Service, or the Wastewater Treatment Service Capacity.

8. FORCE MAJEURE EXCUSED LIABILITY

A. The City shall be excused from any breach of this Agreement and from any liability or damage if caused by a Force Majeure, subject to the provisions and requirements of this Paragraph.

B. The City shall perform the requirements of this Agreement fully and within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure" event. Any delay in the performance attributable to a "Force Majeure" event shall not be deemed a violation of the City's obligations under this Agreement.

C. If claiming a Force Majeure event, the City shall notify the Township by telephone within 24 hours of discovering any "Force Majeure" event which causes a delay in its compliance with this Agreement. Telephone notice shall be followed by written notice within 10 calendar days and shall describe in detail the anticipated length of delay, the precise cause or causes of delay, the measures taken by the City to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The City shall adopt all reasonable measures to avoid or minimize any such delay.

D. If the Parties agree that the delay or anticipated delay was excused by the occurrence of a Force Majeure event, the delay shall not be deemed a violation of the City's obligations of this Agreement, and the City shall be allowed such additional time for performance as necessary to compensate for the Force Majeure event. In no event shall the additional time be longer than the duration of the Force Majeure event.

9. OPERATING LIABILITY

The City does not guarantee uninterrupted service and shall not be liable to the Township or other person, firm or corporation for injuries or damages caused by such interruptions whether caused by defects in original construction, cave-ins, accidents, repairs or other causes except as specifically provided by law; nor shall the City be liable to the Township or other person, firm or corporation for injuries or damages that may be sustained by reason of the failure of the Wastewater Treatment System or for injuries or damages to persons or property arising, accruing or resulting from the use of the Wastewater Treatment System or from any apparatus or appurtenance in connection therewith.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, except that it is the express intention of the Parties hereto that this Agreement shall not be construed to be a requirements contract within the purview of the Uniform Commercial Code.

11. RELATIONSHIP OF PARTIES

Nothing under this Agreement and no action taken pursuant hereto shall cause the City and the Township to be treated as a partnership, joint venture, association, or other common entity.

12. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives and successors.

13. SAVING CLAUSE

If any part of this Agreement is held by a Court of competent jurisdiction to be illegal or unenforceable, such event shall not be deemed to affect the validity of any other portion hereof. Any such holding materially affecting the commitments herein may be the subject of further negotiations for purpose of legally revising the consideration involved.

14. EFFECTIVE DATE; AGREEMENT CONDITIONAL

This Agreement shall not be effective unless and until the date when all of the following conditions has been satisfied (or waived in whole or in part) in the sole discretion of the City:

A. The Agreement has been signed by authorized representatives of both the City and the Township as set forth below.

B. By no later than _____, the City and Pepsi have entered into a separate agreement applicable to the payment by Pepsi of Pepsi's share of the Capital Costs and Design

Engineering Costs for the Improvements to the City WWTP associated with Pepsi's discharges to the City WWTP.

C. By no later than _____ the City's application for a low-interest loan under the State Revolving Fund (SRF)/Strategic Water Quality Initiatives Fund (SWQIF) Loan Program is approved.

15. TERMINATION

A. This Agreement shall remain in full force and effect for a period of 20 years from the execution date which it bears, or payment in full of the SWQIF loan, whichever is later.

~~B. The termination of this Agreement shall not relieve either Party or other person from any fines, penalties, costs, proceedings, or other liabilities or obligations arising under Applicable Legal Requirements.~~

16. ENTIRE AGREEMENT

This Agreement constitutes the final, entire and exclusive agreement of the Parties with respect to the subject matter addressed, and supersedes all prior communications, understandings and agreements relating to the subject matter, whether oral or written. Nothing in this Agreement shall limit the ability of the Parties to negotiate amendments to this Agreement, provided that except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. Nothing in this Agreement is intended to nor should it be construed to create any rights in any persons or entities that are not a party to this Agreement. **Notwithstanding anything in this paragraph to the contrary, the agreements dated June 30, 1997, October 8, 2001 and March 7, 2005 set out in Exhibit A, not changed or affected by this agreement, shall remain in full force and affect.**

17. CONSTRUCTION AND INTERPRETATION

The construction and interpretation of this Agreement shall be governed by the following:

A. Both parties were represented by legal counsel specially retained for purposes of this Agreement and both parties and their legal counsel had a part in drafting this Agreement. Therefore, it is to be construed as mutually drafted.

B. The paragraph headings and captions are for reference only and shall not affect the interpretation of this Agreement.

C. The "Whereas" recitals, Paragraphs A-Y, and the Exhibits are incorporated into and are made integral parts of this Agreement.

D. The interpretation of this Agreement shall not be affected by any course of dealing between the Parties.

18. PROVISIONS THAT SURVIVE TERMINATION.

A. Any provision of this Agreement which expressly provides that it shall survive termination of this Agreement shall continue to bind that Parties notwithstanding termination or expiration of the Agreement as provided herein.

B. In addition, the following Paragraphs shall survive and continue to bind the Parties beyond termination of this Agreement (or any part thereof) until the terms and conditions are fully satisfied or expire by their very nature: 9 ("Operating Liability"); 10 ("Governing Law"); 11 ("Relationship Of Parties"); 13 ("Saving Clause"); 15 ("Termination"); 16 ("Entire Agreement"); 17("Construction And Interpretation"); and 18 ("Provisions That Survive Termination").

IN WITNESS WHEREOF, this Agreement is signed and delivered by authority of the City and the Township given on the dates set forth below.

CITY OF HOWELL, MICHIGAN,
A Michigan municipal corporation

In the presence of:

By _____
Nick Proctor, Mayor

n the presence of:

By _____
Jane Cartwright, City Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF LIVINGSTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Nick Proctor the Mayor and Jane Cartwright, the City Clerk of the City of Howell, for and on behalf of the City.

Notary Public, Livingston County, MI
My commission expires:

TOWNSHIP OF MARION, LIVINGSTON CTY,
a Michigan municipal corporation

In the presence of:

By _____
Robert Hanvey, Supervisor

In the presence of:

By _____
Tammy Beal, Township Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF LIVINGSTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Robert Hanvey, the Supervisor and Tammy Beal, the Township Clerk of the Township of Marion, for and on behalf of the Township.

Notary Public, Livingston County, MI
My commission expires:

[End of Document Except For Exhibits]

Exhibit A
Exhibit B

Exhibit C

Requested modifications to the sewer agreement.

In paragraph M change the word "contribution" to "share."

Paragraph 4. Payment for capital improvements

There is a conflict caused by the 14 day time constraint on the invoice and the 30 days prior to the due date requirement. I'm not sure we need an invoice. If the invoice is sent early, we would be required to pay more than 30 days before the loan payment. If it is sent late we could meet the 14 day requirement without meeting the 30 day requirement.

Paragraph 6 A 1. and 2. Use the percentages rather than "as provided" and "agreed upon."

Paragraph 8 C the telephone notice wording has no provision to assure that we received notice, a voice recorded message could be lost or otherwise not received by the township. A written response from the township to the city would insure that both parties were aware of the problem.

In Q Exhibit B is called the "Project Plan" but in definitions Exhibit B is the HRC DE Proposal. Should one of those be Exhibit C? Is the cost spreadsheet going to be included in the agreement? Please provide your versions of the exhibits.

Minor changes to the last sentence of 16 – in red below.

Notwithstanding anything in this paragraph to the contrary, the agreements dated June 30, 1997, October 8, 2001 and March 7, 2005 set out in Exhibit A, *are not changed or affected by this agreement, and shall remain in full force and affect.*

Statement about sewer usage rates charged by the city to the township for processing not being increased as a result of this improvement.

Statement that sewer usage rates charged by the city to their customers may be higher than rates charged by the township to our customers. This may require an amendment to the contract.

Gorski Hauling

Attention Bob Hanvey Marion Township 2877 W. Coon Lake Howell

My bid for the township road clean-up is as follows:

Car/Truck tires at \$4.00 a piece

1- 20 yard dumpster for road debris at \$ 400.00, I will prorate the remaining debris

Tractor/semi tires at \$40.00 a piece

\$60.00 an hour for road time clean-up

Total Estimate-\$2800.00

Thank you for your consideration, I can be reached at 517-388-2780

RECEIVED

MAR 18 2020

Richard T. Gorski

MEMO

To: Marion Township Board

From: Bob Hanvey

Subject: Short term rentals

Date: March 26, 2020

Attached is a letter from the attorney representing the owners of the rental property on Triangle Lake.

Mike Kehoe will respond to him and we should have his response for distribution to the board by meeting time.

The Planning Commission is considering changes to our zoning ordinance to regulate short-term rentals. The definition of short-term rentals will require some research and thought. It is very unlikely that short-term rentals will be allowed in zoning districts around lakes.

We are required to consider the rights of all property owners in creating the new restrictions.

The Plato Law Firm

30500 NORTHWESTERN HIGHWAY SUITE 425
FARMINGTON HILLS, MI 48334 (248) 855-6650 FAX (248) 865-0002

Edward D. Plato

eplato@platolawfirm.com

March 12, 2020

Michael J. Kehoe
Attorney at Law
710 E. Grand River
Howell, MI 48843

Re: 1697 Triangle Lake Road

Dear Mr. Kehoe:

Please be advised that this office represents Robert and Shirley Schmitz and they have asked me to respond to your letter of February 10, 2020.

In your letter, you indicate that the Marion Township Zoning Ordinance does not permit short-term rentals on their property or in any location in Marion Township. You further indicate that you will advise the Township to enforce its ordinance based upon the Schmitz property being in violation of the zoning ordinance.

I have reviewed the Marion Township Zoning Ordinances and I do not find any ordinance or section prohibiting short-term rentals of their property at 1697 Triangle Lake Road. Accordingly, please specifically advise me as to what ordinance you believe Mr. and Mrs. Schmitz are violating. Furthermore, please advise what the Township considers to be a "short-term rental". Although Mr. and Mrs. Schmitz have sought renters through Airbnb, all of their rentals thus far have been for a minimum of 45 days.

I look forward to your thoughtful consideration of this matter.

Very truly yours,

THE PLATO LAW FIRM



Edward D. Plato, Esq.

EDP:rld

cc: Robert and Shirley Schmitz

31620



Carlisle | Wortman

ASSOCIATES, INC.

117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

March 1, 2020

Robert Hanvey, Supervisor
Marion Township
2877 West Coon Lake Road
Howell, MI 48843

Dear Bob,

Thank you for all your support over the past fifteen (15) years. Find attached to this letter an updated agreement for consulting services. Our records indicate that the contract that we are working under has long since expired. As written, the proposed agreement would go into effect starting April 1, 2020.

Please note that our fees have remained unchanged for almost a decade. The proposed agreement is for three (3) years and includes increases to our rates during that period.

Please sign and return the attached agreement. Please note that we will begin using the new fee schedule starting April 1, 2020.

I'd be happy to meet with you to discuss this further. Thank you again.

Thank you,

CARLISLE/WORTMAN ASSOC., INC.

John L. Enos, AICP

Principal



Carlisle | Wortman
ASSOCIATES, INC.

117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT, Entered into this **1st day of April, 2020**, by the **Marion Township** hereinafter referred to as the "Client" and Carlisle/Wortman Associates, Inc. hereinafter referred to as the "Consultant."

WHEREAS, The Client desires to engage the Consultant to provide assistance in planning and zoning services.

NOW, THEREFORE, In consideration of the foregoing, and of the mutual agreement hereinafter set forth, the parties hereto legally intending to be bound hereby do agree for themselves and their respective successors and assigns as follows:

SECTION 1.0

PLANNING SERVICES

The Consultant for his part agrees to provide services in accordance with the Scope of Work included as Attachment I and Attachment II.

SECTION 2.0

COLLECTION OF DATA

It is understood that the Consultant will have the cooperation of the Client in the collection of basic data and other information as needed for the above work. This shall include the transmittal of digital files as required.

SECTION 3.0

PAYMENT FOR SERVICES

Terms of Payment - The Consultant shall present the Client an invoice after the first of each month based on work performed in the previous month. Invoices shall be paid within thirty (30) days after receipt by the Client. Specific fees are outlined in Attachment I and Attachment II.

SECTION 4.0

REPRESENTATION

It is understood and agreed that John Enos, Principal will represent the Consultant in all matters pertaining to this Agreement. From time to time, the Consultant may employ additional personnel or sub-consultants to assist in the execution of matters pertaining to this contract.

SECTION 5.0

OWNERSHIP OF MATERIALS

All documents or other materials prepared by the Consultant under this Agreement shall be considered the property of the Client.

SECTION 6.0

LIMITATION OF LIABILITY

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damages and losses arising from the negligent acts, errors or omissions of the Consultant in the performance of professional services under this Agreement, to the extent that the Consultant is responsible for such damages and losses on a comparative basis of fault and responsibility between the Consultant and the Client. The Consultant is not obligated to indemnify the Client for the Client's own negligence.

SECTION 7.0

TERMS OF AGREEMENT

The term of this Agreement shall be for a period from April 1, 2020 to March 31, 2023 (three years), unless mutually extended.

This Agreement may be terminated by either the Client or Consultant individually or jointly upon sixty (60) days written notice. Compensation during the notice period would be paid by the Client to the Consultant if services are faithfully rendered to the Client.

IN WITNESS WHEREOF, The Consultant and the Township execute this Agreement as of the date first set forth in this Agreement.

WITNESS

CLIENT

Marion Township Supervisor

Marion Township Clerk

CONSULTANT

Douglas Lewan, AICP
Vice-President
Carlisle/Wortman Associates, Inc.

John Enos, AICP
Principal
Carlisle/Wortman Associates, Inc.

Attachment I

Development Review

As needed, we will provide development review for all site plans, special land use requests, rezoning, etc. Reviews will be transmitted to the Township in a timely fashion (ideally one week prior to the scheduled meeting) to allow the Planning Commission ample time to review the information. We will be available to attend Township Planning Commission meetings to explain our review comments and to provide general assistance and consultation to the Planning Commission.

Development review (site plans, subdivision plats, rezoning, etc.) is performed in accordance with a pre-agreed fee schedule. This schedule is established so that applicants, not the general fund, can be charged the appropriate review fees by means of a set fee schedule as developed by the Township. The development review fees as noted in Attachment II will remain unchanged over the three (3) years of this contract unless mutually agreed upon between the client and consultant.

Hourly Charge

Occasionally our fees fall outside of the above tasks. In those cases, our current hourly rate schedule is as follows:

Position	Rates			
	Current	2020	2021	2022
		1 year	2 Year	3 Year
Principal	\$85/hr.	\$95/hr.	\$105/hr.	\$115/hr.
Associate	\$70/hr.	\$80/hr.	\$90/hr.	\$100/hr.
Planner/Landscape Architect	\$65/hr.	\$75/hr.	\$85/hr.	\$95/hr.
GIS Equipment Charge	\$25/hr.	\$25/hr.	\$25/hr.	\$25/hr.
Secretarial	\$50/hr.	\$55/hr.	\$60/hr.	\$65/hr.
Expenses (photocopies, prints, maps, etc.)	(+ 20%)	(+ 20%)	(+ 20%)	(+ 20%)

*As noted, each of the hourly rates will increase on April 1st of each year based on the above schedule.

Attachment II

- 1) Single-Family Subdivision Plat Review:
 - a) Sketch Plan Review - \$250 plus \$10.00 per acre
 - b) Preliminary Plat Review - \$400 plus \$25.00 per acre
 - c) Tentative/ Final Plat Review - \$400 plus \$35.00 per acre
 - d) Final Plat Review - \$300 plus \$10.00 per acre

- 2) Site Plan Review Residential (new development):
 - a) Concept Plan - \$350 plus \$25.00 per acre
 - b) Final Plan - \$400 plus \$25.00 per acre

Site Plan Review Commercial (new development):

 - a) Concept Plan - \$350 plus \$25.00 per acre
 - b) Final Plan - \$400 plus \$25.00 per acre

Site Plan Review Residential (expansion of or addition to existing development):

 - a) Concept Plan - \$350 plus \$20.00 per acre
 - b) Final Plan - \$400 plus \$20.00 per acre

Site Plan Review Commercial (expansion of or addition to existing development):

 - a) Concept Plan - \$350 plus \$20.00 per acre
 - b) Final Plan - \$400 plus \$20.00 per acre

- 3) Planned Unit Development:
 - a) Minor/Major Determination Letter \$300
 - b) Preliminary Plans - \$350 plus \$30.00 per acre
 - c) Final Detailed Site Plans - \$400 plus \$30.00 per acre

- 4) Rezoning Applications: - \$400 plus \$15.00 per acre

- 5) Conditional Use Applications - \$300 in addition to site plan fee

- 6) ZBA Variances: - \$250 per application

- 7) Review of Revisions: - Hourly, based on current rates

- 8) Private Road Review: - \$400

- 9) Wetland Review: - \$400.00 plus \$25 per acre

Financial Capability

Carlisle/Wortman Associates, Inc. is a Michigan corporation established in May of 1991. Prior to May of 1991, Carlisle Associates was organized as a sole proprietorship. There exists no conflicting financial or professional interest in the Township which would not allow us to perform services. A financial profile may be obtained upon request.

Carlisle/Wortman Associates, Inc. is an Equal Opportunity Employer.

Insurance

Carlisle/Wortman Associates Inc. maintains General Liability, Automotive Liability, and Professional Liability in the amount of at least \$500,000. Workers Compensation insurance with statutory coverages is also maintained. Evidence or proof of insurance shall be provided if requested by the Township.