

**CITY OF OWOSSO**  
**REGULAR MEETING OF THE CITY COUNCIL**  
**MONDAY, MAY 04, 2015**  
**7:30 P.M.**

Meeting to be held at City Hall  
301 West Main Street

**AGENDA**

**OPENING PRAYER:**

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

**APPROVAL OF THE AGENDA:**

**APPROVAL OF THE MINUTES OF SPECIAL MEETING OF APRIL 15, 2015:**

**APPROVAL OF THE MINUTES OF REGULAR MEETING OF APRIL 20, 2015:**

**ADDRESSING THE CITY COUNCIL**

1. Your comments shall be made during times set aside for that purpose.
2. Stand or raise a hand to indicate that you wish to speak.
3. When recognized, give your name and address and direct your comments and/or questions to any City official in attendance.
4. Each person wishing to address the City Council and/or attending officials shall be afforded one opportunity of up to four (4) minutes duration during the first occasion for citizen comments and questions. Each person shall also be afforded one opportunity of up to three (3) minutes duration during the last occasion provided for citizen comments and questions and one opportunity of up to three (3) minutes duration during each public hearing. Comments made during public hearings shall be relevant to the subject for which the public hearings are held.
5. In addition to the opportunities described above, a citizen may respond to questions posed to him or her by the Mayor or members of the Council, provided members have been granted the floor to pose such questions.

**PROCLAMATIONS / SPECIAL PRESENTATIONS**

1. Wayfinding Update. A brief presentation by Gordon Pennington detailing progress on the development of a wayfinding system for the city.

**PUBLIC HEARINGS**

1. Residential Design Standards Ordinance Amendment. Conduct a public hearing to receive citizen comment regarding the proposed ordinance amendment to repeal or modify Section 38-398, *Residential dwelling design standards*, of the Code of Ordinances of the City of Owosso.
2. Residential Refuse Collection Ordinance Amendment. Conduct a public hearing to receive citizen comment regarding the proposed ordinance to amend Section 34-49, *Refuse collection-Residential collection*, of the Code of Ordinances of the City of Owosso to allow trash to be placed at the curb the night before scheduled trash collection.

**CITIZEN COMMENTS AND QUESTIONS**

**CITY MANAGER REPORT**

Project Status Report

**CONSENT AGENDA**

1. Boards and Commissions Appointments. Approve the following mayoral boards and commissions appointments:

<b>Name</b>	<b>Board/Commission</b>	<b>Term Expires</b>
Tracey Peltier	Historical Commission filling unexpired term of L. Weckwert	12-31-2015
Dean Ebert	Historical Commission filling unexpired term of S. Osika	12-31-2016
Larry Cook	Building Authority	6-30-2018
Larry Cook	Brownfield Redevelopment Authority Reappointment	6-30-2019
Frank Livingston	Planning Commission Reappointment	6-30-2018
Randy Woodworth	Parks and Recreation Commission Filling unexpired term of T. Alderman	6-30-2017
Brent Wesley	Airport Board Reappointment	12-31-2017
Denice Grace	Shiawassee District Library Board Reappointment	6-30-2019
Gary Wilson	Downtown Historic District Commission Reappointment	6-30-2018
Dave Vaughn	Brownfield Redevelopment Authority Reappointment	6-30-2019

2. Recreation Service Agreement – Softball. Approve the proposed recreation service agreement with Owosso Girl’s Softball League LLC for the use of Bennett Field for youth softball for a period expiring December 31, 2019.
3. Recreation Service Agreement – Baseball. Approve the proposed recreation service agreement with Owosso Youth Baseball for the use of the Rudy Demuth Field for youth baseball for a period expiring December 31, 2020.
4. Engineering Services Agreement. Approve an agreement for professional engineering services with Spicer Group for the North Street Culvert replacement project.
5. Traffic Control Order 1331. Approve the Traffic Control Order to reserve the first three parking spots on the north side of Exchange Street next to Water Street for Tamale Rose – vending trailer.
6. Purchase of Two Cots for Ambulance Services. Approve the execution of a contract for purchase of one Stryker 6082 MX-Pro Cot and one Stryker 6252 Stair-Pro for a total cost of \$8,413.05.
7. Set Public Hearing – 2014-2015 City Budget. Set required Public Hearing pursuant to Chapter 8 of the City Charter for May 5, 2014 to receive citizen comment regarding proposed 2014-2015 City Budget.

**ITEMS OF BUSINESS**

1. Feral/Stray Cat Trap-Neuter-Return Ordinance. Consider adding ordinance to the Code of Ordinances Chapter 5 Animals Article IV – Feral/Stray Cat Trap-Neuter-Return.

2. DEQ consent agreement. Consider authorizing execution of an administrative order by consent for response activities and payment of response activity costs with the Michigan Department of Environmental Quality (MDEQ).
3. Authorizing purchase of Vactor Manufacturing Model 2115 combination sewer cleaner. Consider authorizing the execution of a contract with Jack Doheny Companies for a Vactor Manufacturing Model 2115 combination sewer cleaner.
4. Application for Transportation Economic Development Funds. Consider authorizing submission of MDOT application for Transportation Economic Development Funds for pavement rehabilitation (of Washington Street from Gute Street to Corunna Avenue).

### **COMMUNICATIONS**

1. T. Alderman Parks & Recreation Commission. Letter of Resignation.
2. Planning Commission. Minutes of April 27, 2015.
3. Parks & Recreation Commission. Minutes of March 23, 2015.
4. Historical Commission. Minutes of March 9, 2015 and April 13, 2015.
5. Zoning Board of Appeals. Minutes of April 21, 2015.

### **CITIZEN COMMENTS AND QUESTIONS**

### **NEXT MEETING**

Monday, May 18, 2015

### **BOARDS AND COMMISSIONS OPENINGS**

Historical Commission, expires December 31, 2017  
Parks & Recreation Commission, expires June 30, 2017  
Planning Commission, expires June 30, 2016

### **ADJOURNMENT**

The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy K. Kirkland, City Clerk, 301 West Main Street, Owosso, MI 48867 or at (989) 725-0500. The City of Owosso Website address is [www.ci.owosso.mi.us](http://www.ci.owosso.mi.us).

**OWOSSO CITY COUNCIL  
SPECIAL MEETING**

**APRIL 15, 2015**

**7:00 P.M.**

**PRESIDING OFFICER:** MAYOR BENJAMIN R. FREDERICK

**OPENING PRAYER:** MAYOR BENJAMIN R. FREDERICK

**PLEDGE OF ALLEGIANCE:** MAYOR BENJAMIN R. FREDERICK

**PRESENT:** Mayor Benjamin R. Frederick, Mayor Pro-Tem Christopher T. Eveleth, Councilpersons Loreen F. Bailey, David B. Bandkau (arrived at 7:35 p.m.), Burton D. Fox, Elaine M. Greenway, and Robert J. Teich, Jr.

**ABSENT:** None.

Motion by Mayor Pro-Tem Eveleth to set a time limit of 9:00 p.m. for the meeting.

Motion supported by Councilperson Bailey and concurred in by unanimous vote.

**CITIZEN COMMENTS AND QUESTIONS**

None.

**DISCUSSION**

City Manager Crawford began the budget discussion with an explanation of the revenue in the general fund. He stated the two big revenue resources are taxes and state revenue sharing. He explained that there are not any great increases in revenue this year. Property tax revenue has actually dropped about \$10,000 for the year. He explained the two type of the State Revenue Sharing. The city will receive about a \$33,000 increase in the amount from the constitutional revenue sharing. The statutory revenue sharing has been pretty much eliminated due to changes in the formula by the state administration. Federal grants are pretty much eliminated.

There was discussion between the city manager and council about the possibility of the library purchasing the library building for a nominal fee. They also discussed the possibility of creating a 501(3) (c) for the historical properties making it its own entity with the city supporting them for 2 years.

The discussion then turned to Expenditures. City Manager Crawford went through the expenditures in each department.

There was a lengthy discussion between council and Public Safety Director Lenkart on the expenditures for public safety. They also discussed the ambulance transfer charges and payments for the service.

Assistant City Manager Sue Montenegro explained to council the "Safe Routes to School Program." There is a walking audit scheduled for Saturday, May 16<sup>th</sup> for Central School and attempts are being made to coordinate an audit with Bryant, Emerson and the Middle School. The program covers Kindergarten to eighth grade and would provide a source of funding to improve the routes children take to and from school each day.

The city manager ended the budget discussion for the evening by detailing the Community Development department.

**ADJOURNMENT**

The meeting adjourned at 8:58 p.m.

---

Benjamin R. Frederick, Mayor

---

Roxane Cramer, Clerk's Assistant

**OWOSSO CITY COUNCIL  
REGULAR MEETING**

**APRIL 20, 2015**

**7:30 P.M.**

**PRESIDING OFFICER:** MAYOR BENJAMIN R. FREDERICK

**OPENING PRAYER:** PASTOR MARK KINCAID  
FIRST FREE METHODIST CHURCH OF OWOSSO

**PLEDGE OF ALLEGIANCE:** JENNIFER KRAJCOVIC  
OHS SPECIAL EDUCATION TEACHER

**PRESENT:** Mayor Benjamin R. Frederick, Mayor Pro-Tem Christopher T. Eveleth,  
Councilpersons Loreen F. Bailey, David B. Bandkau, Burton D. Fox,  
Elaine M. Greenway, and Robert J. Teich, Jr.

**ABSENT:** None.

**APPROVE AGENDA**

Motion by Mayor Pro-Tem Eveleth to approve the agenda with the following changes:

Consent 5. Recreation Service Agreement - Splash Pad Maintenance be moved to Item of Business 3.  
Consent 6. Bid Award – 2015 Spring Tree Purchase Program be moved to Item of Business 4.

Motion supported by Councilperson Fox and concurred in by unanimous vote.

**APPROVAL OF THE MINUTES OF REGULAR MEETING OF APRIL 6, 2015**

Motion by Mayor Pro-Tem Eveleth to approve the Minutes of the Regular Meeting of April 6, 2015 as presented.

Motion supported by Councilperson Greenway and concurred in by unanimous vote.

**STUDENT REPRESENTATIVE REPORT**

The delegation from Lincoln High School was unable to attend tonight's meeting. Their report will be rescheduled for another date.

**PROCLAMATIONS / SPECIAL PRESENTATIONS**

**AUTISM AWARENESS MONTH**

Mayor Frederick delivered the following proclamation of the Mayor's Office declaring the month of April 2015 as Autism Awareness Month in the City of Owosso. Owosso High School Special Education Teacher Jennifer Krajcovic was on hand to receive the proclamation.

**A PROCLAMATION  
OF THE MAYOR'S OFFICE OF THE CITY OF OWOSSO, MICHIGAN  
DESIGNATING APRIL 2015 AS  
AUTISM AWARENESS MONTH IN THE CITY OF OWOSSO**

WHEREAS, autism is a pervasive developmental disorder affecting the social, communication and behavioral skills of those affected by it, and,

WHEREAS, as more health professionals become proficient in diagnosing autism, more children are being diagnosed on the autism spectrum, resulting in rates as high as 1 in 68 children nationally, and,

WHEREAS, while there is no cure for autism, it is well-documented that if individuals with autism receive early and intensive treatment, they lead significantly improved lives and could potentially reduce the costs of their future care by as much as 2/3, and,

WHEREAS, individuals with autism often require a lifetime of specialized and community support services to ensure their health and safety and to support families' resilience as they manage the psychological and financial burdens autism can present, and

WHEREAS, inroads in treatment and the funding of that treatment have been made, more needs to be done to help those with autism and their families.

NOW, THEREFORE BE IT RESOLVED that I, Benjamin R. Frederick, Mayor of the City of Owosso, do hereby proclaim April 2015 as AUTISM AWARENESS MONTH in the City of Owosso, and urge all residents to participate in National Autism Awareness Month activities, in order to become better educated about autism and create a better community for individuals with autism.

Proclaimed this 20<sup>th</sup> day of April, 2015.

#### **ARBOR DAY PROCLAMATION**

Mayor Frederick delivered the following proclamation of the Mayor's Office declaring April 25, 2015 as Arbor Day in the City of Owosso. As principal emeritus of Central Elementary School Councilperson Bailey joined the mayor at the podium to receive the proclamation.

#### **A PROCLAMATION OF THE MAYOR'S OFFICE OF THE CITY OF OWOSSO, MICHIGAN DESIGNATING APRIL 25, 2015 AS ARBOR DAY IN THE CITY OF OWOSSO**

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees. This holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, decades before this in the 1830's, Owosso was making the transition from settlement to city thanks to the amazing vision of Alfred and Benjamin Williams. The Williams brothers joined with early settlers, Dr. and Mrs. John Barnes, in designing a city layout that would preserve a natural character and aesthetic appeal. This led them to plant many of the trees that have made our city streets so beautiful for over 175 years, leading to the lovely arbors of trees that frame so many of our boulevards and the many mature trees that stand in our yards, and

WHEREAS, these trees have reduced the erosion of our precious topsoil by wind and water, cut our heating and cooling costs by shading our homes, cleansed the air, produced life-giving oxygen, and provided habitat for wildlife, at the same time increasing property values, enhancing the economic vitality of business areas, and generally adding beauty to our neighborhoods and parks, and

WHEREAS, it falls to each generation to continue the stewardship that was launched by our founding families through the planting of new trees throughout our city to replace those that are lost, and

WHEREAS, Owosso is proud to hold the Tree City USA designation and to be engaged again this year in a partnership with the Owosso Public Schools promoting urban forestry. This volunteer effort and

partnership will culminate in the planting of trees at the Central Elementary School grounds while educating youngsters and adults about the importance of our trees and tree planting.

NOW, THEREFORE, I, Benjamin R. Frederick, Mayor of the City of Owosso, do hereby proclaim April 25th, 2015 as Arbor Day in the City of Owosso, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

FURTHER, I urge our citizens to plant trees to promote the well-being of this generation and our posterity.

Proclaimed this 20<sup>th</sup> day of April, 2015.

### **2014 AMOS GOULD OUTSTANDING CITIZEN AWARD – GARY M. BURK**

Mayor Frederick presented the 2014 Amos Gould Outstanding Citizen Award to Gary M. Burk recognizing him for a lifetime of positive contributions to the Owosso community, the State of Michigan, and the country with his tireless work on water quality issues. The mayor delivered a heartfelt and humorous speech detailing Mr. Burk's contributions. Mr. Burk received a standing ovation from those present. To commemorate the honor he was presented with a ceremonial key to the City.

The Council recessed briefly from 8:02 p.m. until 8:12 p.m.

### **PUBLIC HEARINGS**

None.

### **CITIZEN COMMENTS AND QUESTIONS**

Gordon Pennington, 417 East Oliver Street, gave a brief update on the status of the development of a wayfinding system for the City saying that sponsorship is still needed for 6 more signs. He is also working on including civic related signage in the system as well and he indicated his desire to make the most of the new CIS Trail connection west of town to bring more folks into the City. Lastly, he generously offered to match the \$1,000 grant from the Shiawassee Foundation for the City's Arbor Day project, saying he would like to see it used to plant a massive oak tree.

Mayor Frederick thanked Mr. Pennington for his generosity. He went on to note that he had participated in the grand opening of the CIS Trail over the weekend and found it to be a great addition to the area and he really appreciated this long-standing project finally coming to fruition. He said that Mayor Pro-Tem Eveleth had expressed a desire to be the Council representative to the Friends of the CIS Trail which will be undertaking planning and construction of the next phase of the trail.

Councilperson Fox asked for an update on the Howard Street code enforcement issue discussed at the last meeting. City Manager Crawford noted that he was currently researching the issue and in the process of preparing documentation to engage the property owner in a clean-up process.

Mayor Pro-Tem Eveleth noted that the Downtown Farmers' Market Block Party would be held this coming Saturday and those interested in attending could see him for tickets.

### **CITY MANAGER REPORT**

City Manager Crawford indicated he had nothing to report at this time.

### **CONSENT AGENDA**

Motion by Mayor Pro-Tem Eveleth to approve the Consent Agenda as follows:

**First Reading and Set Public Hearing – Residential Design Standards Ordinance Amendment.**

Conduct first reading and set a public hearing for Monday, May 4, 2015 to receive citizen comment regarding the proposed ordinance amendment to repeal Section 38-398, *Residential dwelling design standards*, of the Code of Ordinances of the City of Owosso as follows:

**RESOLUTION NO. 29-2015**

**SETTING A PUBLIC HEARING REGARDING  
AN ORDINANCE TO REPEAL SECTION 38-398 OF CHAPTER 38, ZONING  
TO REMOVE RESIDENTIAL DWELLING DESIGN STANDARDS**

WHEREAS, the city of Owosso has a zoning ordinance governing the aesthetic standards of new homes;  
and

WHEREAS, this ordinance has been deemed to be too restrictive and destructive of the very housing variations that Owosso prides itself upon.

NOW THEREFORE BE IT RESOLVED THAT THE CITY OF OWOSSO ORDAINS:

SECTION 1. REPEAL. That Section 38-398, Residential dwelling design standards, be repealed in its entirety as follows:

**~~Sec. 38-398. – Residential dwelling design standards.~~**

~~(a) Intent. This section is intended to establish regulations for the construction of new residential dwellings zoned R-1 and R-2, including reconstructed and in-fill housing. The standards herein are intended to:~~

- ~~(1) Prevent grossly dissimilar dwellings which would adversely affect the value and character of dwellings in the surrounding area.~~
- ~~(2) Prevent adverse effects on the desirability of an area to existing or prospective homeowners.~~
- ~~(3) Ensure the stability of the environment.~~
- ~~(4) Promote the most appropriate use of real estate.~~
- ~~(5) Increase the opportunity to realize the development pattern envisioned in the Owosso Master Plan.~~

~~These regulations are based on the finding that the cohesiveness and character of the city's neighborhoods are significant factors in the city's quality of life, contribute to the distinct character in the various neighborhoods and help retain property values. These regulations further ensure new housing units are harmonious with the general character of the adjacent houses and the city overall and ensure a stable housing stock. While some level of diversity is desirable, these regulations are intended to ensure the design variation of new homes is similar to the level of variation in existing homes in the immediate area, or surrounding neighborhoods with similar densities for new residential projects. The standards shall not be construed to prohibit innovative design concepts involving such matters as solar home.~~

~~(b) Applicability. The regulations of this section shall apply to all new single family home construction zoned R-1 and R-2. Major home expansions where the homeowner is expanding the footprint of the home by greater than either twenty-five (25) percent or five hundred (500) square feet, whichever is greater, shall comply with subsections (d)(8), (d)(9), and (d)(10), in addition to required building codes, to ensure the resulting home continues to maintain the character of the neighborhood. The~~

~~standards shall not apply to minor home expansions, interior remodeling, or to residences outside of the one- and two-family zoning districts.~~

~~(c) Approval. Compliance with these regulations shall be determined by the building and zoning administrator at the time the building permit is reviewed and shall be based on the standards of subsection (d) below.~~

~~(d) Standards.~~

~~(1) Each such dwelling unit shall comply with all pertinent building and fire codes. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements. Where there are conflicting applicable regulations, the more stringent shall apply.~~

~~(2) All construction required herein shall be commenced only after a building permit has been obtained in accordance with applicable building codes.~~

~~(3) Each such dwelling unit shall comply with the minimum standards listed throughout the zoning code for the zoning district in which it is located, including minimum lot area, minimum lot width, minimum floor area, required setbacks and maximum building height.~~

~~(4) Each dwelling unit shall be firmly attached to a permanent basement or crawl space foundation constructed on the site in accordance with the city's adopted building code.~~

~~Or~~

~~The dwelling shall have an attached or detached structure of equal workmanship as the dwelling unit, designed for the parking and storage of vehicles. Said structure shall be functionally and aesthetically compatible in design and appearance with other residences in the surrounding area as defined in subsection (d)(12) below. When attached to a mobile home, modular home, pre-fabricated home or pre-constructed home, said structure shall comply with all requirements of the city's building code relative to grade separation and fire restrictive requirements.~~

~~(5) Each such dwelling unit shall contain a storage area equal to or greater than ten (10) percent of the square footage of the dwelling or one hundred (100) square feet, whichever shall be less. This storage area shall consist of a basement, attic or in a separate detached accessory structure that complies with the standards of this section regarding accessory buildings and structures. The intent of these standards is to limit the extent of outdoor storage.~~

~~(6) A roof overhang of not less than six (6) inches on all sides shall be provided, or alternatively with window sills or roof drainage systems concentrating roof drainage at collection points along the sides of the dwelling.~~

~~(7) A minimum of two (2) exterior doors shall be provided with the second one (1) being in either the rear or side of the dwelling. All dwelling units shall be oriented toward the public right-of-way such that the facade that faces the street contains a door, windows, and other architectural features customary to the front facade of a residence.~~

~~(8) In-fill housing or development on vacant lots in an existing platted subdivision shall consider the gross floor area and lot coverage of surrounding homes to ensure compatibility. The gross floor area and lot coverage of the proposed dwelling shall be at least seventy-five (75) percent and no more than one hundred thirty-five (135) percent of the average square footage of constructed single family dwellings within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit, with measurements made from the edge of the street. The planning commission may approve any proposals that are not able to meet this standard if the commission makes findings that the apparent deviations are not contrary to [subsections] (a)(1)–(5).~~

~~(9) In-fill housing or development on vacant lots in an existing platted subdivision shall maintain a consistent front building line along the street. The front yard setback of the proposed dwelling shall be no less than seventy-five (75) percent and no more than one hundred thirty-five (135)~~

~~percent of the average established front yard setback of other single family dwelling unit within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit, with measurements made from the edge of the street. The planning commission may approve any proposals that are not able to meet this standard if the commission makes findings that the apparent deviations are not contrary to [subsections] (a)(1)–(5).~~

- ~~(10) Building appearance for all new single family dwelling unit construction shall be aesthetically compatible in design and appearance with other residences in the surrounding area.~~

~~Definitions for what constitutes the surrounding area are as follows:~~

- ~~i. For new single family neighborhood development (in the form of a new subdivision plat or new site condominium project), the surrounding area is defined as the nearest existing neighborhoods with similar densities.~~
- ~~ii. For in-fill housing development where there are one (1) or a few isolated sites being developed within the existing neighborhood (in the form of an existing lot of record or recent land division), surrounding area shall be defined as within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit; with measurements made from the edge of the lot in each direction, including the opposite side of the street.~~

~~The determination shall be made by the building official. In considering similarity and compatibility with the surrounding area the following features must be considered in order to meet this requirement:~~

- ~~a. Exterior building material used on the proposed dwelling should match or be similar to that used on a preponderance of homes in the surrounding area.~~
- ~~b. Roof style.~~
- ~~c. The design and position of windows (total area, size, number etc.).~~
- ~~d. Front entry design (presence of porches, front door location, etc.).~~
- ~~e. Garage style and design.~~

~~If the building official cannot reach a determination on architectural compatibility or the petitioner disputes the findings, the application shall be forwarded to the planning commission for review and final action.~~

- ~~(e) Exceptions. The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this ordinance [from which this section derives] and pertaining to such parks.~~

SECTION 2. EFFECTIVE DATE. This amendment shall become effective twenty days after passage.

SECTION 3. AVAILABILITY. This ordinance may be purchased or inspected in the city clerk's office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

SECTION 4. PUBLIC HEARING. A public hearing is set for Monday, May 4, 2015 at 7:30p.m. for the purpose of hearing citizen comment regarding the proposed ordinance amendment.

### **First Reading and Set Public Hearing – Residential Refuse Collection Ordinance Amendment.**

Conduct first reading and set a public hearing for Monday, May 4, 2015 to receive citizen comment regarding the proposed ordinance to amend Section 34-49, *Refuse collection-Residential collection*, of the Code of Ordinances of the City of Owosso to allow trash to be placed at the curb the night before scheduled trash collection as follows:

### **RESOLUTION NO. 30-2015**

**FIRST READING & SET PUBLIC HEARING FOR  
AN ORDINANCE AMENDING SECTION 34-49. - REFUSE COLLECTION--RESIDENTIAL COLLECTION  
OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN  
PERTAINING TO PLACING OF REFUSE FOR COLLECTION**

WHEREAS, the Code of Ordinances of the City of Owosso, Michigan currently has rules and regulations applying to residential refuse collection requiring that refuse not be placed at curbside until the morning of collection; and

WHEREAS, the city desires to repeal that morning of collection provision to allow placing at curbside the evening before.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY OF OWOSSO ORDAINS:

SECTION 1. AMENDMENT. That Section 34-49 paragraph (2) be amended by deleting and adding as follows:

**Sec. 34-49. - Refuse collection—Residential collection.**

The following rules and regulations shall apply to residential refuse collection in the city:

- (2) If curb side pick-up is selected by the resident, refuse is to be placed inside the curb so that the same shall not in any way be in the traffic portion of the street, and shall be placed inside the curb for pick-up ~~on the morning~~ **no earlier than 4:00 p.m. the day before the day** of collection in residential areas. Any containers belonging to the resident that are left at the curb after collection of refuse are to be removed to the back or side yard on or before 12:00 midnight, of the day of collection. Materials left at the curb for pick-up must be in city-approved containers. The responsibility of compliance with the provisions of this section shall be with the property owner or person placing refuse at the curb. Any violator of the provisions of this section will be immediately ticketed by the police department.

SECTION 2: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this article is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this article. The city hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 3. EFFECTIVE DATE. This amendment shall become effective twenty days after passage.

SECTION 4. AVAILABILITY. This ordinance may be purchased or inspected in the city clerk's office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

SECTION 5. PUBLIC HEARING. A public hearing is set for Monday, May 4, 2015 at 7:30p.m. for the purpose of hearing citizen comment regarding the proposed ordinance amendment.

**Boards and Commissions Appointment.** Approve the following Mayoral Boards and Commissions appointment:

Name	Board/Commission	Term Expires
Sharol Haskins	Downtown Development Authority/ Main Street Board filling unexpired term of M. Landino	06-30-2018

**Steps for Courage 5K Run and Competitive Walk Permission.** Consider application of the Memorial Healthcare Auxiliary for use of portions of West King Street, Seventh Street, Oliver

Street, Chipman Street, Center Street, Alturas Drive and Alta Vista Drive from 9:00am to 11:00am on Saturday, April 25, 2015 for the 8th Annual Steps for Courage Run and Competitive Walk and authorize Traffic Control Order No. 1330 formalizing the request.

**Recreation Service Agreement – Splash Pad Maintenance.** (This item was moved to Items of Business.)

**Bid Award - 2015 Spring Tree Purchase Program.** (This item was moved to Items of Business.)

**Warrant No. 501.** Approve Warrant No. 501 as follows:

<b>Vendor</b>	<b>Description</b>	<b>Fund</b>	<b>Amount</b>
Logicalis, Inc.	Network engineering support - March 2015	Various	\$13,328.00
William C. Brown, P.C.	Professional services - March 10, 2015 – April 13, 2015	General	\$10,520.64
Waste Management	Disposal charges - March 16, 2015 – March 31, 2015	WWTP	\$ 5,035.01

**Check Register— March 2015.** Affirm check disbursements totaling \$ 797,001.47 for the month of March 2015.\*

Motion supported by Councilperson Bailey.

Roll Call Vote.

AYES: Councilpersons Teich, Bailey, Bandkau, Fox, Greenway, Mayor Pro-Tem Eveleth, and Mayor Frederick.

NAYS: None.

\*Due to their length marked items are not included in the minutes. Full text of these items is on file in the Clerk's Office.

**ITEMS OF BUSINESS**

**TRAP-NEUTER-RETURN ORDINANCE DISCUSSION**

Mayor Frederick noted the updated ordinance language that was distributed to Council at the beginning of the meeting.

Council discussed the potential establishment of a Trap-Neuter-Return Ordinance to reduce the feral cat population and ensure the humane treatment of stray and feral cats. Councilperson Bailey noted that the ordinance presented to Council this evening was simply a starting point. She said her hope was that the City would adopt a similar ordinance and would serve as a model for other communities looking to tackle stray cat issues in their area. She explained that the ordinance would not be punitive in nature but would establish rules and resources for those caring for stray cat colonies.

There was discussion on specific provisions of the ordinance and whether the rules should be structured as an ordinance or an administrative order. Based on the feedback from Council and the City Attorney a decision was reached to provide a period of time to rework the proposed ordinance before presenting it for first reading.

Motion by Mayor Pro-Tem Eveleth to place the Stray Cat Ordinance on the May 18<sup>th</sup> agenda for first reading with the intention of allowing further review and refinement until that time.

Motion supported by Councilperson Teich.

Roll Call Vote.

AYES: Councilperson Bailey, Mayor Pro-Tem Eveleth, Councilpersons Fox, Teich, Greenway, and Mayor Frederick.

NAYS: Councilperson Bandkau.

**EXECUTIVE SESSION**

Motion by Mayor Pro-Tem Eveleth to authorize holding Executive Session after the last session of Citizen Comments and Questions for the purpose of discussing collective bargaining negotiations and considering the City Manager's performance evaluation (at the request of the employee).

Motion supported by Councilperson Fox.

Roll Call Vote.

AYES: Mayor Pro-Tem Eveleth, Councilpersons Teich, Fox, Bailey, Greenway, Bandkau, and Mayor Frederick.

NAYS: None.

**RECREATION SERVICE AGREEMENT – SPLASH PAD MAINTENANCE**

Assistant City Manager Susan K. Montenegro explained that a minor change needed to be made to the contract amount to include the full amount of the wages the Y will be paying the employee providing the service, increasing the total contract amount by approximately \$200.

Motion by Mayor Pro-Tem Eveleth to approve a one-year contract with the Shiawassee Family YMCA for daily maintenance of the splash pad and bathrooms at Bentley Park in an amount not to exceed \$6,003.00 as follows:

**RESOLUTION NO. 31-2015**

**AUTHORIZING EXECUTION A RECREATION SERVICE AGREEMENT  
FOR SPLASH PAD MAINTENANCE AND BATHROOM MONITORING  
BETWEEN THE CITY OF OWOSSO, MICHIGAN AND THE SHIAWASSEE FAMILY YMCA**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, installed a splash pad at Bentley Park for public use and enjoyment; and

WHEREAS, vandalism has happened to the splash pad and bathrooms at Bentley Park; and

WHEREAS, the Shiawassee Family YMCA has asked to enter into agreement with the city of Owosso to provide basic maintenance to the splash pad and cleaning of the pavilion bathrooms twice daily.

NOW THEREFORE BE IT RESOLVED by the city council of the city of Owosso, Shiawassee County, Michigan that:

FIRST: The city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to enter into a contract with the Shiawassee Family YMCA to provide basic maintenance for the splash pad and bathrooms at Bentley Park.

SECOND: The mayor and the city clerk of the city of Owosso are instructed and authorized to sign the attached contract between the city of Owosso and the Shiawassee Family YMCA.\*

THIRD: The accounts payable department is authorized to pay the Shiawassee Family YMCA upon receipt of an invoice up to the contract amount of \$6,003.00.

Motion supported by Councilperson Teich.

Roll Call Vote.

AYES: Councilpersons Teich, Fox, Bailey, Greenway, Bandkau, Mayor Pro-Tem Eveleth, and Mayor Frederick.

NAYS: None.

**BID AWARD - 2015 SPRING TREE PURCHASE PROGRAM**

Councilperson Bandkau inquired whether the trees in question would be used to replace existing trees that require removal or if they would be new plantings. It was indicated the trees would be utilized for both purposes.

Motion by Mayor Pro-Tem Eveleth to authorize purchase order with Schichtel's Nursery, Inc. for the purchase of 75 trees in the amount of \$5,500.00 and further authorize payment up to the contract amount upon satisfactory receipt of product as follows:

**RESOLUTION NO. 32-2015**

**AUTHORIZING THE EXECUTION OF A PURCHASE ORDER FOR THE  
SPRING 2015 TREE PURCHASE PROGRAM  
WITH SCHICHEL'S NURSERY INC.**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, will be planting 75 trees this spring as part of the SPRING 2015 TREE PURCHASE PROGRAM; and

WHEREAS, the city sought bids for (25) Cleveland Select Pear, (25) Crimson King and (25) Bowhall Maples for said program. Four bids were received: Agroscaping for \$7,628.00, John Deere Landscaping for \$10,000.00, KLM Landscape for \$10,700.00 and Schichtel's Nursery Inc. for \$5,500.00; and

WHEREAS, it is hereby determined that Schichtel's Nursery Inc. has submitted the lowest responsible and responsive bid.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to award the SPRING 2015 TREE PURCHASE bid to Schichtel's Nursery in the amount of \$5,500.00 for the purchase of 75 trees for spring planting.

SECOND: The contract between the City and Schichtel's Nursery Inc. shall be in the form of a City Purchase Order for the amount of \$5,500.00.

THIRD: The accounts payable department is authorized to pay Schichtel's Nursery Inc. up to the purchase order amount upon satisfactory delivery.

FOURTH: The above expenses shall be paid from Local and Major Street Tree Planting Fund.

Motion supported by Councilperson Bailey.

Roll Call Vote.

AYES: Councilpersons Bandkau, Bailey, Greenway, Teich, Mayor Pro-Tem Eveleth, Councilperson Fox, and Mayor Frederick.

NAYS: None.

### **COMMUNICATIONS**

E. Powell, Historical Commission. Letter of resignation.

Richard C. Williams, Finance Director. Revenue & Expenditure Report – March 2015.

Charles P. Rau, Building Official. March 2015 Building Department Report.

Charles P. Rau, Building Official. March 2015 Code Violations Report.

Kevin D. Lenkart, Public Safety Director. March 2015 Police Report.

Kevin D. Lenkart, Public Safety Director. March 2015 Fire Report.

Councilperson Teich inquired whether there had been any progress in the sale of Osburn Lakes lots. It was noted that signage advertising the lots is now up and no new offers had been received as of late.

Councilperson Fox asked for clarification on the police report to determine how many traffic stops resulted in tickets. He said he was concerned that people are running lights and will eventually cause an accident.

### **CITIZEN COMMENTS AND QUESTIONS**

Lorraine Austin, 906 Chipman Lane, commended Councilperson Bailey for all of her efforts with the Community Cats organization. She also encouraged people to donate to the cause as the organization is funded entirely by grants and donations.

Eddie Urban, 601 Glenwood Avenue, said he would like to see a moratorium on the 3 cats rule in the winter to allow for the feeding of stray cats during cold weather.

Tom Manke, business owner at 118 South Washington Street, said the opening of the CIS Trail is a great opportunity and he hoped the City would work with neighboring jurisdictions to bring the trail all the way in to town. He asked if the plans former Building Official John Archer had sketched together were still available.

Discussion on the next phase of the CIS Trail ensued. It was noted that several people and various local organizations had been working on plans for some time now and there were some major hurdles to overcome. The hope was to put a temporary trail in place while work continues on the long-term issues.

Councilperson Greenway also commended Councilperson Bailey for her efforts with the Community Cats organization saying she didn't think people understood the hours of planning that she puts into the endeavor.

The Council recessed briefly from 9:14 p.m. to 9:25 p.m.

**ADJOURNED TO EXECUTIVE SESSION AT 9:25 P.M.**

**RETURNED FROM EXECUTIVE SESSION AT 10:52 P.M.**

### **APPROVAL OF THE MINUTES OF EXECUTIVE SESSION OF MARCH 30, 2015**

Motion by Mayor Pro-Tem Eveleth to approve the Minutes of the Executive Session of March 30, 2015 as presented.

Motion supported by Councilperson Bailey and concurred in by unanimous vote.

**NEXT MEETING**

Thursday, April 30, 2015, Budget Meeting 7:00 p.m.

Monday, May 04, 2015, Regular Meeting 7:30 p.m.

**BOARDS AND COMMISSIONS OPENINGS**

Historical Commission, expires December 31, 2015

Historical Commission, expires December 31, 2016

Historical Commission, expires December 31, 2017

Parks & Recreation Commission, expires June 30, 2017

Planning Commission, expires June 30, 2016

**ADJOURNMENT**

Motion by Mayor Pro-Tem Eveleth for adjournment at 10:53 p.m.

Motion supported by Councilperson Teich and concurred in by unanimous vote.

---

Benjamin R. Frederick, Mayor

---

Amy K. Kirkland, City Clerk

ORDINANCE NO

**AN ORDINANCE TO REPEAL SECTION 38-398 OF CHAPTER 38, ZONING  
TO REMOVE RESIDENTIAL DWELLING DESIGN STANDARDS**

WHEREAS, the city of Owosso has a zoning ordinance governing the aesthetic standards of new homes;  
and

WHEREAS, this ordinance has been deemed to be too restrictive and destructive of the very housing  
variations that Owosso prides itself upon.

NOW THEREFORE BE IT RESOLVED THAT THE CITY OF OWOSSO ORDAINS:

SECTION 1. REPEAL. That Section 38-398, Residential dwelling design standards, be repealed in its  
entirety as follows:

**~~Sec. 38-398. Residential dwelling design standards.~~**

(a) ~~Intent. This section is intended to establish regulations for the construction of new residential  
dwellings zoned R-1 and R-2, including reconstructed and in-fill housing. The standards herein are  
intended to:~~

- ~~(1) Prevent grossly dissimilar dwellings which would adversely affect the value and character of  
dwellings in the surrounding area.~~
- ~~(2) Prevent adverse effects on the desirability of an area to existing or prospective homeowners.~~
- ~~(3) Ensure the stability of the environment.~~
- ~~(4) Promote the most appropriate use of real estate.~~
- ~~(5) Increase the opportunity to realize the development pattern envisioned in the Owosso Master  
Plan.~~

~~These regulations are based on the finding that the cohesiveness and character of the city's  
neighborhoods are significant factors in the city's quality of life, contribute to the distinct  
character in the various neighborhoods and help retain property values. These regulations  
further ensure new housing units are harmonious with the general character of the adjacent  
houses and the city overall and ensure a stable housing stock. While some level of diversity is  
desirable, these regulations are intended to ensure the design variation of new homes is similar  
to the level of variation in existing homes in the immediate area, or surrounding neighborhoods  
with similar densities for new residential projects. The standards shall not be construed to  
prohibit innovative design concepts involving such matters as solar home.~~

(b) ~~Applicability. The regulations of this section shall apply to all new single family home construction  
zoned R-1 and R-2. Major home expansions where the homeowner is expanding the footprint of the  
home by greater than either twenty-five (25) percent or five hundred (500) square feet, whichever is  
greater, shall comply with subsections (d)(8), (d)(9), and (d)(10), in addition to required building  
codes, to ensure the resulting home continues to maintain the character of the neighborhood. The  
standards shall not apply to minor home expansions, interior remodeling, or to residences outside of  
the one- and two-family zoning districts.~~

(c) ~~Approval. Compliance with these regulations shall be determined by the building and zoning  
administrator at the time the building permit is reviewed and shall be based on the standards of  
subsection (d) below.~~

~~(d) Standards.~~

- ~~(1) Each such dwelling unit shall comply with all pertinent building and fire codes. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements. Where there are conflicting applicable regulations, the more stringent shall apply.~~
- ~~(2) All construction required herein shall be commenced only after a building permit has been obtained in accordance with applicable building codes.~~
- ~~(3) Each such dwelling unit shall comply with the minimum standards listed throughout the zoning code for the zoning district in which it is located, including minimum lot area, minimum lot width, minimum floor area, required setbacks and maximum building height.~~
- ~~(4) Each dwelling unit shall be firmly attached to a permanent basement or crawl space foundation constructed on the site in accordance with the city's adopted building code.~~

~~Or~~

~~The dwelling shall have an attached or detached structure of equal workmanship as the dwelling unit, designed for the parking and storage of vehicles. Said structure shall be functionally and aesthetically compatible in design and appearance with other residences in the surrounding area as defined in subsection (d)(12) below. When attached to a mobile home, modular home, pre-fabricated home or pre-constructed home, said structure shall comply with all requirements of the city's building code relative to grade separation and fire restrictive requirements.~~

- ~~(5) Each such dwelling unit shall contain a storage area equal to or greater than ten (10) percent of the square footage of the dwelling or one hundred (100) square feet, whichever shall be less. This storage area shall consist of a basement, attic or in a separate detached accessory structure that complies with the standards of this section regarding accessory buildings and structures. The intent of these standards is to limit the extent of outdoor storage.~~
- ~~(6) A roof overhang of not less than six (6) inches on all sides shall be provided, or alternatively with window sills or roof drainage systems concentrating roof drainage at collection points along the sides of the dwelling.~~
- ~~(7) A minimum of two (2) exterior doors shall be provided with the second one (1) being in either the rear or side of the dwelling. All dwelling units shall be oriented toward the public right-of-way such that the facade that faces the street contains a door, windows, and other architectural features customary to the front facade of a residence.~~
- ~~(8) In-fill housing or development on vacant lots in an existing platted subdivision shall consider the gross floor area and lot coverage of surrounding homes to ensure compatibility. The gross floor area and lot coverage of the proposed dwelling shall be at least seventy-five (75) percent and no more than one hundred thirty-five (135) percent of the average square footage of constructed single family dwellings within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit, with measurements made from the edge of the street. The planning commission may approve any proposals that are not able to meet this standard if the commission makes findings that the apparent deviations are not contrary to [subsections] (a)(1) —(5).~~
- ~~(9) In-fill housing or development on vacant lots in an existing platted subdivision shall maintain a consistent front building line along the street. The front yard setback of the proposed dwelling shall be no less than seventy-five (75) percent and no more than one hundred thirty-five (135) percent of the average established front yard setback of other single family dwelling unit within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit, with measurements made from the edge of the street. The planning commission may approve any proposals that are not able to meet this standard if the commission makes findings that the apparent deviations are not contrary to [subsections] (a)(1) —(5).~~

~~(10) Building appearance for all new single-family dwelling unit construction shall be aesthetically compatible in design and appearance with other residences in the surrounding area.~~

~~Definitions for what constitutes the surrounding area are as follows:~~

- ~~i. For new single-family neighborhood development (in the form of a new subdivision plat or new site-condominium project), the surrounding area is defined as the nearest existing neighborhoods with similar densities.~~
- ~~ii. For in-fill housing development where there are one (1) or a few isolated sites being developed within the existing neighborhood (in the form of an existing lot of record or recent land division), surrounding area shall be defined as within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit; with measurements made from the edge of the lot in each direction, including the opposite side of the street.~~

~~The determination shall be made by the building official. In considering similarity and compatibility with the surrounding area the following features must be considered in order to meet this requirement:~~

- ~~a. Exterior building material used on the proposed dwelling should match or be similar to that used on a preponderance of homes in the surrounding area.~~
- ~~b. Roof style.~~
- ~~c. The design and position of windows (total area, size, number etc.).~~
- ~~d. Front entry design (presence of porches, front door location, etc.).~~
- ~~e. Garage style and design.~~

~~If the building official cannot reach a determination on architectural compatibility or the petitioner disputes the findings, the application shall be forwarded to the planning commission for review and final action.~~

~~(e) Exceptions. The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this ordinance [from which this section derives] and pertaining to such parks.~~

SECTION 2. EFFECTIVE DATE. This amendment shall become effective May 25, 2015.

SECTION 3. AVAILABILITY. This ordinance may be purchased or inspected in the city clerk's office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion Supported by

Roll Call Vote.

AYES:

NAYS:

ABSENT:

*I hereby certify that the foregoing document is a true and complete copy of action taken by the Owosso City Council at the regular meeting of May 4, 2015.*

---

Amy K. Kirkland, City Clerk



## MEMORANDUM

---

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

---

DATE: May 1, 2015 Reprinted from meeting of April 20, 2015

TO: City Council

FROM: City Manager

SUBJECT: AN ORDINANCE AMENDING SECTION 34-49. - REFUSE COLLECTION--  
RESIDENTIAL COLLECTION OF THE CODE OF ORDINANCES OF THE CITY OF  
OWOSSO, MICHIGAN PERTAINING TO PLACING OF REFUSE FOR COLLECTION

RECOMMENDATION: Consider amending the Code of Ordinances

BACKGROUND: The current Section 34-49, paragraph 2 requires that residents not place refuse at curbside for collection until the morning of collection. This requirement makes it difficult for many individuals who must have the refuse at curbside before 7:00 a.m. to do so. In the winter this is well before daylight. The proposed amendment would allow the placing of refuse at curbside anytime after 4:00 p.m. the evening before.

FISCAL IMPACTS: There would be no fiscal impact.

**ORDINANCE NO.**

**AN ORDINANCE AMENDING SECTION 34-49. - REFUSE COLLECTION--RESIDENTIAL COLLECTION  
OF THE CODE OF ORDINANCES OF THE CITY OF OWOSSO, MICHIGAN  
PERTAINING TO PLACING OF REFUSE FOR COLLECTION**

WHEREAS, the Code of Ordinances of the City of Owosso, Michigan currently has rules and regulations applying to residential refuse collection requiring that refuse not be placed at curbside until the morning of collection; and

WHEREAS, the city desires to repeal that morning of collection provision to allow placing at curbside the evening before.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY OF OWOSSO ORDAINS:

SECTION 1. AMENDMENT. That Section 34-49 paragraph (2) be amended by deleting and adding as follows:

**Sec. 34-49. - Refuse collection—Residential collection.**

The following rules and regulations shall apply to residential refuse collection in the city:

- (2) If curb side pick-up is selected by the resident, refuse is to be placed inside the curb so that the same shall not in any way be in the traffic portion of the street, and shall be placed inside the curb for pick-up ~~on the morning~~ **no earlier than 4:00 p.m. the day before the day** of collection in residential areas. Any containers belonging to the resident that are left at the curb after collection of refuse are to be removed to the back or side yard on or before 12:00 midnight, of the day of collection. Materials left at the curb for pick-up must be in city-approved containers. The responsibility of compliance with the provisions of this section shall be with the property owner or person placing refuse at the curb. Any violator of the provisions of this section will be immediately ticketed by the police department.

SECTION 2. EFFECTIVE DATE. This amendment shall become effective May 25, 2015.

SECTION 3. AVAILABILITY. This ordinance may be purchased or inspected in the city clerk's office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion Supported by

Roll Call Vote.

AYES:

NAYS

ABSENT:

*I hereby certify that the foregoing document is a true and complete copy of action taken by the Owosso City Council at the regular meeting of May 4, 2015*

---

Amy K. Kirkland, City Clerk



## MEMORANDUM

---

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

---

DATE: May 1, 2015

TO: City Council

FROM: Susan Montenegro, asst. city manager/dir. of community development

SUBJECT: Recreation Service Agreement for Bennett Field.

### RECOMMENDATION:

Staff recommends approval of this five (5) year agreement as it is a continued effort by the Owosso Girls Softball League, LLC and the city to support physical activity and healthy living within the community.

### BACKGROUND:

For many years now the Owosso Girls Softball League, LLC has conducted a girls softball league at Bennett Field. Owosso Girls Softball League, LLC shall permit other individuals and entities to use the premises when such use does not conflict with their activities.

Attached you will find a 5 year agreement allowing the Owosso Girls Softball League, LLC first priority for use of the softball fields at Bennett Field in exchange for their management of the use of Bennett Field and a \$1.00 per year use fee .

### FISCAL IMPACTS:

Document originated by: Susan Montenegro

**RESOLUTION NO**

**AUTHORIZING EXECUTION OF A CONTRACT FOR RECREATION SERVICES  
BETWEEN THE CITY OF OWOSSO, MICHIGAN AND  
OWOSSO GIRLS SOFTBALL LEAGUE, LLC  
FOR THE USE OF BENNETT FIELD**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has determined that recreation opportunities for area youth is important to the community as a whole; and

WHEREAS, the Owosso Girls Softball League, LLC has dedicated itself to providing exercise and recreation opportunities for young girls in Owosso and the surrounding area; and

WHEREAS, the city wishes to contribute to recreation opportunities for area youth by allowing the use of Bennett Field for softball league games and events; and

WHEREAS, the Owosso Girls Softball League, LLC has agreed to coordinate all use of the softball fields.

NOW THEREFORE BE IT RESOLVED by the city council of the city of Owosso, Shiawassee County, Michigan that:

FIRST: The city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to enter into agreement with the Owosso Girls Softball League, LLC for recreation services.

SECOND: The mayor and the city clerk of the city of Owosso are instructed and authorized to sign the document substantially in the form attached memorializing use of Bennett Field and the responsibilities of the city and the Owosso Girls Softball League, LLC.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO,  
SHIAWASSEE COUNTY, MICHIGAN THIS 4<sup>th</sup> DAY OF MAY, 2015.

## BENNETT FIELD RECREATION SERVICE AGREEMENT

This Recreation Service Agreement is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the city of Owosso, a Michigan municipal corporation (“Lessor”) and the Owosso Girls Softball League, LLC (“Lessee”), a non-profit community service organization which conducts a girls softball program. This agreement shall run until December 31, 2020 unless terminated by either party upon written notice by December 31 of any year.

1. This agreement allows the Lessee to use the property commonly known as Bennett Field for girls’ softball.
2. This agreement does not grant the Lessee the exclusive use of the property. Lessee shall permit other individuals and entities to use the premises when such use does not conflict with Lessee activities.
3. Lessee agrees to defend, indemnify and hold Lessor harmless from any claim, loss, expense or damage to any person or property in or upon the said premises or any area allocated to the Lessee, arising out of the Lessee’s use or occupancy of said premises, or any act or neglect of Lessee or its servants, employees or agents, or any change, alteration or improvement in the premises made by the Lessee.
4. Lessee agrees to pay Lessor one dollar (\$1.00) each year of this agreement. This sum shall be paid on or before October 30 each year. Lessor and Lessee agree to allocate duties and responsibilities for maintaining the premises as follows:
  - a. Lessor will be responsible for all major maintenance responsibilities associated with maintaining the physical facilities which are a part of Bennett Field including: (a) mowing outside of the softball fields (b) repairing fences surrounding the softball fields; (c) structural modifications to the buildings; (e) garbage pickup; (e) providing materials for bleacher board repair as needed; (f) painting outside of main building; (g) repairing/securing lights in outfield; (h) plumbing; (i) supply bathroom toiletry and cleaning supplies; (j) replace/repair doors; (k) repair safety lights on front of main building; (l) and pay all utilities.
  - b. Lessee will be responsible for all minor maintenance responsibilities associated with use of the facilities for the girls softball program including: (a) trash collection; (b) mowing of grass within fenced in areas of softball fields; (c) maintaining infields; (d) performing minor repairs to buildings and stands; (e) keeping all fields free of debris; (f) and minor painting of buildings up to one (1) story high.
5. Lessee agrees to reimburse Lessor for any damage to Bennett Field, which arises out of actions on the part of Owosso Girls Softball league participants during league sanctioned events which are reckless, careless, or which otherwise are intended to damage the softball fields and associated facilities.

6. Lessee shall not make permanent improvements or construct or install any structures on the premises without prior written approval of the Lessor. In the event such permanent improvements or structures shall be installed, they shall become part of the premises and remain thereon at the termination of the agreement.
7. The Lessee shall not assign this agreement.
8. The Lessee shall maintain, at its expense, insurance on the premises throughout the term of this agreement with the Lessor as an additional insured. See exhibit A.
9. Lessee will send safety issues/concerns that arise by email to the public works department for the city.
10. Public works superintendent will do a walk-through of Bennett Field with Lessee in the spring and in the fall to assess needs.

**EXHIBIT A  
PROOF OF INSURANCE**

This is to certify that the following endorsement is part of the policy(s) described below:

<b>NAMED INSURED (CONTRACTOR)</b>	<b><u>COMPANIES AFFORDING COVERAGE</u></b>
	A.
	B.
ADDRESS	C.

It is hereby understood and agreed that the city of Owosso, its city council and each member thereof and every officer and employee of the city shall be named as joint and several assureds with respect to claims arising out of the following Recreation Service Agreement:

**USE OF BENNETT FIELD**

It is further agreed that the following indemnity agreement between the city of Owosso and the named insured is covered under this policy: Owosso Girls Softball League, LLC agrees to indemnify, hold harmless and defend city, its city council and each member thereof and every officer and employee of city from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against city, its city council and each member thereof and any officer or employee of city which results directly or indirectly from the wrongful or negligent actions of Owosso Girls Softball League, LLC officers, employees, agents or others employed by Owosso Girls Softball League, LLC while engaged by Owosso Girls Softball League, LLC in the performance of this agreement.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to the city of Owosso.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Please include a copy of insurance declaration verifying **Three Million Dollars (\$3,000,000) general liability** limit coverage and **25 Thousand Dollars (\$25,000)** participant accident coverage. The verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE \_\_\_\_\_

BY \_\_\_\_\_

Authorized Insurance Agent

AGENCY \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands and seals that day and year first above written.

For the Lessee:

For the Lessor:

\_\_\_\_\_  
By: Frederick G. Dibeau  
Owosso Girls Softball League, LLC

\_\_\_\_\_  
By: Benjamin R. Frederick  
Its: Mayor

\_\_\_\_\_  
Amy K. Kirkland  
Its: City Clerk

Approved as to substance:

\_\_\_\_\_  
Donald D. Crawford, City Manager    Date

Approved as to form:

\_\_\_\_\_  
William C. Brown, City Attorney    Date

Approved by city council: \_\_\_\_\_



## MEMORANDUM

---

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

---

DATE: May 1, 2015

TO: City Council

FROM: Susan Montenegro, asst. city manager/dir. of community development

SUBJECT: Recreation Service Agreement for Rudy DeMuth Field.

### RECOMMENDATION:

Staff recommends approval of this five (5) year agreement as it is a continued effort by the Owosso Youth Baseball and the city to support physical activity and healthy living within the community.

### BACKGROUND:

For many years now Owosso Youth Baseball has conducted a boys baseball league at Rudy DeMuth Field. Owosso Youth Baseball shall have exclusive use of the baseball fields from April 1 through the third Saturday of July each year. Owosso Youth Baseball may permit other individuals and entities to use the premises when such use does not conflict with Owosso Youth Baseball activities.

Attached you will find a 5 year agreement allowing the Owosso Youth Baseball first priority for use of the baseball fields at Rudy DeMuth Field in exchange for their management of Rudy DeMuth Field and a \$1.00 per year use fee .

### FISCAL IMPACTS:

City will pay for major repairs/maintenance of Rudy DeMuth Field; Owosso Youth Baseball will be responsible for all minor maintenance as documented in the agreement.

Document originated by: Susan Montenegro

**RESOLUTION NO**

**AUTHORIZING EXECUTION OF A CONTRACT FOR RECREATION SERVICES BETWEEN  
THE CITY OF OWOSSO, MICHIGAN AND  
OWOSSO YOUTH BASEBALL  
FOR THE USE OF RUDY DEMUTH FIELD**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has determined that recreation opportunities for area youth is important to the community as a whole; and

WHEREAS, the Owosso Youth Baseball has dedicated itself to providing exercise and recreation opportunities for young boys in Owosso and the surrounding area; and

WHEREAS, the city wishes to contribute to recreation opportunities for area youth by allowing the use of Rudy DeMuth Field for baseball league games and events; and

WHEREAS, the Owosso Youth Baseball has agreed to coordinate all use of the baseball fields.

NOW THEREFORE BE IT RESOLVED by the city council of the city of Owosso, Shiawassee County, Michigan that:

FIRST: The city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to enter into agreement with the Owosso Youth Baseball for recreation services.

SECOND: The mayor and the city clerk of the city of Owosso are instructed and authorized to sign the document substantially in the form attached memorializing use of Rudy DeMuth Field and the responsibilities of the city and the Owosso Youth Baseball.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO, SHIAWASSEE COUNTY, MICHIGAN THIS 4<sup>th</sup> DAY OF MAY, 2015.

## **RUDY DEMUTH FIELD RECREATION SERVICE AGREEMENT**

This Recreation Service Agreement is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the city of Owosso, a Michigan municipal corporation ("Lessor") and Owosso Youth Baseball ("Lessee"), a non-profit community service organization which conducts a youth baseball program. This agreement shall run until December 31, 2020 unless terminated by either party upon written notice by December 31 of any year.

1. This agreement allows the Lessee to use the property commonly known as Rudy DeMuth Field for youth baseball.
2. This agreement grants the Lessee exclusive use of the property from April 1 through the third Saturday of July. Lessee may permit other individuals and entities to use the premises when such use does not conflict with Lessee activities.
3. Lessee agrees to defend, indemnify and hold Lessor harmless from any claim, loss, expense or damage to any person or property in our upon the said premises or any area allocated to the Lessee, arising out of the Lessee's use or occupancy of said premises, or any act or neglect of Lessee or its servants, employees or agents, or any change, alteration or improvement in the premises made by the Lessee.
4. Lessee agrees to pay Lessor one dollar (\$1.00) each year of this agreement. This sum shall be paid on or before October 30 each year. Lessor and Lessee agree to allocate duties and responsibilities for maintaining the premises as follows:
  - a. Lessor will be responsible for all major maintenance responsibilities associated with maintaining the physical facilities which are a part of Rudy DeMuth Field including: (a) mowing (b) repairing fences surrounding the baseball fields; (c) structural modifications to the buildings; (e) garbage pickup; (e) providing materials for bleacher board repair as needed; (f) repairing/securing lights in outfield; (g) plumbing; (h) and pay for use of lights.
  - b. Lessee will be responsible for all minor maintenance responsibilities associated with use of the facilities for baseball including: (a) maintaining infields; (b) performing minor repairs to buildings and stands; (c) keeping all fields free of debris; (d) and minor painting of buildings.
5. Lessee agrees to reimburse Lessor for any damage to Rudy DeMuth Field, which arises out of actions on the part of league participants which are reckless, careless, or which otherwise are intended to damage the baseball fields and associated facilities.
6. Lessee shall not make permanent improvements or construct or install any structures on the premises without prior written approval of the Lessor. In the event such permanent

improvements or structures shall be installed, they shall become part of the premises and remain thereon at the termination of the agreement.

7. The Lessee shall not assign this agreement.
8. The Lessee shall maintain, at its expense, insurance on the premises throughout the term of this agreement with the Lessor as an additional insured. See exhibit A.
9. Lessee will send safety issues/concerns that arise by email to the public works department for the city.
10. Public works superintendent will do a walk-through of Rudy DeMuth Field with Lessee in the spring and in the fall to assess needs.

**EXHIBIT A  
PROOF OF INSURANCE**

This is to certify that the following endorsement is part of the policy(s) described below:

**NAMED INSURED (CONTRACTOR)**

**COMPANIES AFFORDING COVERAGE**

**A.**

**B.**

**C.**

ADDRESS

It is hereby understood and agreed that the city of Owosso, its city council and each member thereof and every officer and employee of the city shall be named as joint and several assureds with respect to claims arising out of the following Recreation Service Agreement:

**USE OF BENNETT FIELD**

It is further agreed that the following indemnity agreement between the city of Owosso and the named insured is covered under this policy: Owosso Youth Baseball agrees to indemnify, hold harmless and defend city, its city council and each member thereof and every officer and employee of city from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against city, its city council and each member thereof and any officer or employee of city which results directly or indirectly from the wrongful or negligent actions of Owosso Youth Baseball officers, employees, agents or others employed by Owosso Youth Baseball while engaged by Owosso Youth Baseball in the performance of this agreement.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to the city of Owosso.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Please include a copy of insurance declaration verifying **Three Million Dollars (\$3,000,000) general liability** limit coverage and **25 Thousand Dollars (\$25,000)** participant accident coverage. The verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE \_\_\_\_\_

BY \_\_\_\_\_  
Authorized Insurance Agent

AGENCY \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands and seals that day and year first above written.

For the Lessee:

For the Lessor:

\_\_\_\_\_  
By: Scott McGregor, President  
Owosso Youth Baseball

\_\_\_\_\_  
Benjamin R. Frederick  
Its: Mayor

\_\_\_\_\_  
Amy K. Kirkland  
Its: City Clerk

Approved as to substance:

\_\_\_\_\_  
Donald D. Crawford, City Manager Date

Approved as to form:

\_\_\_\_\_  
William C. Brown, City Attorney Date

Approved by city council: \_\_\_\_\_



## MEMORANDUM

---

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

---

DATE: May 4, 2015

TO: Owosso City Council

FROM: Mark Sedlak, Director of Public Services

SUBJECT: Professional Engineering Services for North Street Culvert Replacement Project: Design and Construction Phase

### RECOMMENDATION:

I recommend City Council accept the proposal from Spicer Group, Inc. and award a contract to them in the amount of \$58,000.00. Funds for this service are available in the General Fund Bridge Maintenance Account Number 203-473-818000.

### BACKGROUND:

On June 16, 2014, City Council awarded a professional engineering services contract to Spicer Group, Inc. through its Quality Based Selection (QBS) process. Specifically, City Council awarded a contract to them for the North Street Culvert Replacement Project: Study and Report Phase. Spicer Group proficiently assisted city staff in acquiring a MDOT grant to replace the culvert and its approaches. Enclosed for your review is Spicer Group's proposal to provide full design and construction engineering services in accordance with requirements of the MDOT grant. I find their pricing reasonable for this type of work.

### FISCAL IMPACTS:

Both the design and construction phases should be performed by the same firm for a seamless service to the city. The City may expect a structure that will service its transportation needs for the next 50 years.

Document originated by: Jane E. Hunt, Engineering Secretary

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT  
FOR PROFESSIONAL ENGINEERING SERVICES WITH  
SPICER GROUP, INC.  
FOR THE NORTH STREET CULVERT REPLACEMENT PROJECT**

WHEREAS, the City of Owosso, Shiawassee County, Michigan, is considering the replacement of the North Street culvert over Corlett Creek; and

WHEREAS, this project requires the services of a professional engineering firm; and

WHEREAS, Spicer Group, Inc. has been prequalified to perform such work and offers to perform work as described in the city's Request For Proposal for the North Street Culvert Replacement Project; and

WHEREAS, Spicer Group, Inc. offers to complete full design and construction administration services of said project in return for compensation in an amount not to exceed of \$58,000.00; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has theretofore determined that it is advisable, necessary and in the public interest to employ the firm of Spicer Group, Inc. to provide professional engineering services for the North Street Culvert Replacement Project.
- SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached, Addendum to an Agreement for Professional Engineering Services between the City of Owosso, Michigan and Spicer Group, Inc.
- THIRD: The Accounts Payable department is authorized to make payment up to the amount of \$58,000.00 to Spicer Group, Inc. upon successful completion of stated work.
- FOURTH: The above expenses shall be paid from the proceeds of the General Fund Bridge Maintenance Account No. 203-473-818000.

April 21, 2015

Mr. Randy Chesney, PE, City Engineer  
City of Owosso  
301 West Main Street  
Owosso, MI 48867-2958

RE: Amendment for Proposal for Design & Construction Engineering Services  
North Street over the Corlett Creek Reconstruction Project  
City of Owosso, Shiawassee County  
CS HSIP 76609, JN 127416

Dear Mr. Chesney:

We are providing this additional information regarding the construction phase services for the project. The fee derived for the construction phase is based on the following estimated hours:

4 hours – Senior Construction Manager  
20 hours – Project Manager  
44 hours – Office Technician  
242 hours – Construction Services Technician (Inspector) based on 4 weeks of inspection (5 days/week @ 11 hour days) and two additional days for marking detour route and reviewing final restoration  
10 hours – Project Assistant

Let us know if you need any additional information.

Sincerely,



**Darrick W. Huff, P.E.**  
Principal/Senior Project Manager



**Michael G. Niederquell, P.E.**  
Director of Transportation

**SPICER GROUP, INC**  
230 S. Washington Avenue  
Saginaw, MI 48607  
Phone: (989) 921-5510  
Fax: (989) 754-2607  
mailto: miken@spicergroup.com

Cc: SGI File, Accounting

Q:\Proj2015\PO13797P2015 - Owosso North  
Street\Chesney\_04212015.docx

April 16, 2015

Mr. Randy Chesney, PE, City Engineer  
City of Owosso  
301 West Main Street  
Owosso, MI 48867-2958

RE: Proposal for Design & Construction Engineering Services  
North Street over the Corlett Creek Reconstruction Project  
City of Owosso, Shiawassee County  
CS HSIP 76609, JN 127416

Dear Mr. Chesney:

We are pleased to submit this proposal to provide design and construction engineering services for the above-referenced project. The project will be funded through the Michigan Department of Transportation (MDOT) using Safety Funds and Local Funds for construction for 2016. The current programmed construction cost for the project is \$197,118. The current breakdown is \$157,694 of Safety funding and \$39,424 of local funding. The project will be subject to MDOT Local Agency Program (LAP) review and contracting requirements. The City of Owosso anticipates that it will be let for bids by MDOT on January 8, 2016.

#### Understanding of Project

The project is located on North Street approximately 1500 feet west of Chipman Road. The existing culvert is in disrepair and needs to be replaced from a structural and functional standpoint. This road is an Urban Local Road on the border between the City and the County. This road is maintained by the City.

We anticipate the road reconstruction will consist of asphalt pavement, aggregate base, geotextile separator, and sand subbase. The City desires for this roadway section to be widened to standard lane and shoulder widths, with the inclusion of bicycle lanes to comply with the City Complete Streets Policy. Guardrail will be upgraded per current standards.

The existing culvert will be replaced with an 11 foot by 6 foot concrete box culvert.

All the design work for this project will be completed in accordance with MDOT and AASHTO design criteria. This work will be completed under the direct supervision of a Professional Engineer licensed in the State of Michigan.

Spicer Group's team has performed numerous projects of similar nature to this project. Spicer Group has extensive experience working with County Drain Commissioners, especially Shiawassee County. As such, we understand the nature and scope of this project and can proceed with the design and construction engineering. Spicer Group provided engineering estimates, safety analysis, and sketches for use in applying for the MDOT grant.

We will use the existing design survey information that we collected previously for this project. We have completed the preliminary work, proposed the project recommendations, assisted the City in obtaining this grant, and look forward to completing the design for this project.

### **Scope of Professional Design Engineering Services**

Our proposed Scope of Design Engineering Services is as follows:

- A. Utilize topographic survey of the area to complete the plan design for the project.
- B. Perform geotechnical investigation consisting of two 5-foot pavement cores and one 25-foot soil boring for the proposed culvert.
- C. Prepare and submit Grade Inspection (GI) Package to the City, MDOT, and affected utility companies, and request GI Meeting to be scheduled with MDOT. The GI Package will consist of the following:
  1. Construction plans (11" x 17") consisting of the following anticipated sheets, based on the English Unit System:
    - Title Sheet (1)
    - Legend Sheet (1)
    - Alignment Sheet (1)
    - General Notes and Quantities Sheet (1)
    - Drainage, Vicinity, and Soil Erosion Sheet (1)
    - Typical Cross Sections Sheets (2)
    - Miscellaneous Details Sheet (1)
    - Separate Roadway Removal & Construction Plan Sheets at a scale of 1"=40' (2)
    - Roadway Profile Sheet at a scale of 1"=40' (1)
    - Culvert Detail Sheet
    - Culvert Wingwall Details and Miscellaneous Detail Sheet
    - Maintaining Traffic and Signing Sheet (1)
    - Permanent Pavement Marking and Signing Sheets (1)
  2. Engineer's Preliminary Estimate of Construction Cost.
  3. Special Provisions for pay items not covered by the MDOT 2012 Standard Specifications for Construction.
  4. Utility Coordination Clause.
  5. HMA Application Estimate.
  6. Maintaining Traffic Special Provision and typical details.
- D. Prepare and submit Project Programming Application (Program Application for Local Agency Road Projects) to the City for review and approval and forwarding final application to MDOT. This also includes requesting information and clearances from various historical and environmental governmental agencies.
- E. MDEQ Permit – The Corlett Creek culvert under North Street will require a Michigan Department of Environmental Quality (MDEQ) Permit Application for replacement.
- F. Complete the MDOT Work Zone Mobility Analysis. If any component of the Work Zone Mobility Analysis exceeds the thresholds, then a Transportation Management Plan will be developed and implemented.
- G. Attend GI Meeting with the City, MDOT, and utility companies and prepare meeting minutes.
- H. Incorporate comments received at the GI Meeting into the final design plans.

- I. Prepare and submit electronic Final Plans Review Package to MDOT for review. The package will consist of the following:
  1. Updated Construction Plans.
  2. Engineer's Final Estimate of Construction Cost.
  3. Updated Special Provisions.
  4. Utility Coordination Clause.
  5. Final Progress Clause.
  6. HMA Application Estimate.
  7. Maintaining Traffic Special Provision and typical details.
- J. Receive and incorporate comments from the City and MDOT.
- K. Submit electronic plans and documents to the City and MDOT.

**Scope of Professional Construction Engineering Services**

Construction phase services such as staking, inspection, testing, and contract administration are included as follows:

- A. Schedule and attend the pre-construction meeting.
- B. Provide Construction Administration services to include:
  1. Project oversight to ensure contract compliance with plans & specifications per MDOT Local Agency guidelines.
  2. Attend progress meetings as required
  3. Attend concrete pre-production meeting
  4. Attend hot mix asphalt pre-production meeting
- C. Provide one full time Construction Services Technician on a daily basis during construction.
- D. The Construction Services Technician will perform material testing services in accordance with the MDOT requirements. Technician will meet all MDOT certification requirements.
- E. Provide compaction testing per MDOT requirements for the following:
  1. Utility Trench Backfill
  2. Existing subgrade
  3. Aggregate Base
- F. Provide all concrete field testing equipment.
- G. Provide concrete testing services to include the following:
  1. Concrete Quality Assurance Plan
  2. Concrete Level I Field Technician
  3. Pick up and curing of test cylinders
  4. 28 Day Compression Test Strength Results
- H. Provide laboratory mechanical analysis for granular and dense graded aggregates. Does not included testing of aggregates for concrete mixes.
- I. Provide daily inspection reports, material testing reports, and soil erosion and sedimentation control reports.
- J. All work shall be performed in accordance with MDOT standards.
- K. Provide record keeping using Field Book and Field Manager.
- L. Process pay estimates.
- M. Process work orders.
- N. Process contract change orders.
- O. Assist you in resolving problems and/or claims related to the project.
- P. Provide all final documentation and files at the completion of the project, including redlined drawings of changes to the storm sewer.

- Q. Complete a post construction audit of the project.
- R. Construction Staking
  - 1. Right-Of-Way & Alignment
    - i. Stake right of way on both sides of the road every 100 foot with stakes.
    - ii. Mark alignment on an offset with paint and PK nail.
  - 2. Aggregate Base
    - i. Stake offsets to edge of pavement for construction of the aggregate base
    - ii. Grade offset stakes to finish pavement surface, and mark cut/fills on stakes

### **Fees**

We propose to provide the above design engineering services for a Cost Plus Fixed Fee, Not to Exceed **\$28,000.00**. We proposed to provide the construction engineering services for an estimated amount of **\$30,000.00** based on a Cost Plus Fixed Fee basis. The construction engineering service fee will be negotiated once the construction schedule is known.

### **Owner Responsibilities**

It is our understanding that the City will provide the following information for our use in completing the design.

- A. Existing construction plans for North Street and the Corlett Creek culvert.
- B. Existing Shiawassee County Drain Commissioner drainage district maps.
- C. Videotaping and inspection of the existing storm sewers and culverts, if needed.
- D. All costs and expenses for permit application fees, publication fees, recording fees, filing fees, and title search assistance for property acquisitions and/or easements are the responsibility of the Owner.
- E. When requested by Spicer Group, the City will review documents prepared by Spicer Group and provide comments in a timely fashion.
- F. Any additional engineering services requested by the City will be negotiated at the time of request for an Additional Fee prior to commencement of any additional work.

### **Services Not Included**

For a clearer understanding of our work scope, the following is not included in our Scope of Professional Services.

All engineering design phase tasks that we anticipate will be required for this project are included in our proposed Scope of Professional Services.

Preparation of Easements – We do not anticipate easements being necessary for this project. We would be happy to prepare any easements for the project should they become necessary. We will perform this service for the project as an additional service using our hourly rates and we will obtain approval from you prior to performing any work related to the preparation of easements.

- Additional studies, investigation, and design relating to traffic impact studies, signage and signalization studies, and environmental issues (i.e., subsurface contamination, sensitive habitat areas, etc.).

- Unless specifically noted in our proposed Scope of Professional Services described above, design of upgrades to existing municipal utilities including water booster pump stations, storm sewer pump stations, utility main extensions, hydraulic modeling, water flow test of water systems, or downstream capacity analysis, etc.
- Effort and expenses related to retaining wall design.
- Separate utility meeting or public meeting.
- Traffic signal design.
- Preparation of permits and applications other than noted in our Scope of Professional Services.

### Additional Services

As the need for additional services may arise, we will provide additional services for a negotiated fee. Additional services will require a Contract Amendment to be approved and signed by the City prior to the start of any additional work.

### Schedule

Based on an Authorization to Proceed date of May 4, 2015, Spicer Group can complete the design work per the schedule in Attachment A, based on the assumption that the City and MDOT can promptly schedule meetings and perform all necessary project reviews. These dates are in accordance with the MDOT LAP planning calendar.

We deeply appreciate your confidence in Spicer Group, and we look forward to working with you and for you on your project.

Sincerely,

  
**Darrick W. Huff, P.E.**  
Principal/Senior Project Manager



**Michael G. Niederquell, P.E.**  
Director of Transportation

**SPICER GROUP, INC**  
230 S. Washington Avenue  
Saginaw, MI 48607  
Phone: (989) 921-5510  
Fax: (989) 754-2607  
mailto: miken@spicergroup.com

\_\_\_\_\_  
Above proposal accepted and approved  
by Owner.

**CITY OF OWOSSO**

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

Cc: SGI File, Accounting

Q:\Proj2015\PO13797P2015 - Owosso North Street\Proposal -  
North Street.docx

**Attachment A**  
**Tentative Project Schedule**  
**Engineering Services for**  
**North Street over Corlett Creek**  
**City of Owosso, Shiawassee County**  
**April 15, 2015**

<u>Tentative Date</u>	<u>Work Description</u>
05/04/15	Receive Authorization to Proceed
08/21/15	Submittal of Grade Inspection Package to MDOT and City
09/18/15	Approximate Grade Inspection Meeting date
10/23/15	Right-of-Way Certification, Permits, Final Plans, Proposal, and Estimate to LAP
01/08/16	MDOT letting
04/06/16*	Begin construction
08/01/16*	Complete construction

Prepared By:

Spicer Group, Inc.  
230 South Washington Avenue  
Saginaw, MI 48607

\*Construction dates are tentative

## GENERAL CONDITIONS ATTACHED TO LETTER AGREEMENT

### SECTION 1

1.1 **Preamble.** This agreement is based upon a mutual obligation of good faith and fair dealing between the parties in its performance and enforcement. Accordingly, the OWNER and the PROFESSIONAL, with a positive commitment to honesty and integrity, agree to the following:

That each will function within the laws and statutes that apply to its duties and responsibilities; that each will assist in the other's performance; that each will avoid hindering the other's performance; that each will work diligently to fulfill its obligations; and that each will cooperate in the common endeavor of the contract.

1.2 **Ownership of Instruments of Service.** All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by the PROFESSIONAL as instruments of service shall remain the property of the PROFESSIONAL. The PROFESSIONAL shall retain all common law, statutory and other reserved rights, including the copyright thereto.

1.3 **Covenant not to Hire.** OWNER agrees that during the term of this agreement and for a period of one (1) year thereafter that it will not hire for its own employment any person employed by the PROFESSIONAL in the performance of this agreement.

1.4 **Standard of Care.** Service performed by PROFESSIONAL under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise.

1.5 **Defects in Service.** OWNER and OWNER's personnel, contractors and subcontractors shall upon discovery promptly report to PROFESSIONAL any defects or suspected defects in PROFESSIONAL's work, in order that PROFESSIONAL may take prompt, effective measures which in PROFESSIONAL's opinion will minimize the consequences of a defect in service. PROFESSIONAL shall not be responsible for additional costs due to any tardiness in reporting defects in service.

1.6 **Reimbursable Expenses** mean the actual expenses incurred by PROFESSIONAL or PROFESSIONAL's independent professional associates or consultants, directly or indirectly in connection with the Project, such as expenses for; transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and courier services; reproduction of reports, drawings, specifications, bidding documents, and similar project-related items; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

1.7 **Standard Hourly Rates** used as a basis for payment mean those rates in effect at the time that the work is performed, for all PROFESSIONAL's personnel engaged directly on the Project, including, but not limited to, architects, engineers, surveyors, designers, planners, drafters, specification writers, estimators, other technical and business personnel. The Standard Hourly Rates include salaries and wages, direct and indirect payroll costs and fringe benefits. The Standard Hourly Rates of personnel of PROFESSIONAL will be adjusted periodically to reflect changes in personnel and in PROFESSIONAL's overall compensation procedures and practices.

1.8 **Limitation of Liability.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the PROFESSIONAL and the PROFESSIONAL's officers, directors, partners, employees and subconsultants, and any of them, to the OWNER and anyone claiming by or through the OWNER, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the PROFESSIONAL under this Agreement, or the total amount of \$100,000.00, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

1.9 **Indemnification.** The PROFESSIONAL agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the PROFESSIONAL's negligent performance of professional services under this Agreement.

The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the PROFESSIONAL, its officers, directors, employees and subconsultants (collectively, Professional) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or PROFESSIONAL or anyone for whom the OWNER is legally liable.

Neither the OWNER nor the PROFESSIONAL shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

1.10 **Severability.** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

1.11 **Survival.** Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

1.12 **Betterment.** If, due to the PROFESSIONAL's negligence, a required item or component of the Project is omitted from the PROFESSIONAL's construction documents, the PROFESSIONAL shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the PROFESSIONAL be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

1.13 **Mediation.** In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the OWNER and the PROFESSIONAL agree that all disputes between them arising out of or relating to the Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The OWNER and the PROFESSIONAL further agree to include a similar mediation provision in all agreements with independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

1.14 **Changed Conditions.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the PROFESSIONAL are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the PROFESSIONAL may call for renegotiation of appropriate portions of this Agreement. The PROFESSIONAL shall notify the OWNER of the changed conditions necessitating renegotiation, and the PROFESSIONAL and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions.

1.15 **Hazardous Materials.** Both parties acknowledge that the PROFESSIONAL's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the PROFESSIONAL or any other party encounters any hazardous or toxic materials, or should it become known to the PROFESSIONAL that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the PROFESSIONAL's services, the PROFESSIONAL may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate PROFESSIONAL's or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.

## SECTION 2

2.1 **Assignment.** Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the PROFESSIONAL shall not be considered an assignment for purposes of this Agreement.

2.2 **Governing Law & Jurisdiction.** The OWNER and the PROFESSIONAL agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Michigan.

2.3 **Billing and Payment Terms.** *Payment Due:* invoices shall be submitted by the PROFESSIONAL (monthly) are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the due date. *Interest:* If payment in full is not received by the PROFESSIONAL within thirty (30) calendar days of the due date, invoices shall bear interest at one-and one-half (1.5) percent of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

2.4 **Suspension of Services.** If the OWNER fails to make payments when due or otherwise is in breach of this Agreement, the PROFESSIONAL may suspend performance of service upon ten (10) calendar days' notice to the OWNER. The PROFESSIONAL shall have no liability whatsoever to the OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by the OWNER. Upon payment in full by the OWNER the PROFESSIONAL shall resume services under this Agreement, and the time scheduled and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expenses necessary for the PROFESSIONAL to resume performance. *Termination of Services:* If the OWNER fails to make payment to the PROFESSIONAL in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the PROFESSIONAL. *Set-off, Backcharges, Discounts:* Payment of invoices shall not be subject to any discounts or set-off's by the OWNER unless agreed to in writing by the PROFESSIONAL. Payment to the PROFESSIONAL for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

2.5 **Collection of Costs.** In the event legal actions necessary to enforce the payment terms of this Agreement, the PROFESSIONAL shall be entitled to collect from the OWNER any judgement or settlement sums due, plus reasonable attorneys' fees, court costs and other expenses incurred by the PROFESSIONAL in connection therewith and, in addition, the reasonable value of the PROFESSIONAL's time and expenses spent in connection with such collection action, computed according to the PROFESSIONAL's prevailing fee schedule and expense policies.

2.6 **Delays.** The OWNER agrees that the PROFESSIONAL is not responsible for damages arising directly or indirectly from any delays for causes beyond the PROFESSIONAL's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the OWNER or the OWNER's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by the PROFESSIONAL to perform its services in an orderly and efficient manner, the PROFESSIONAL shall be entitled to an equitable adjustment in schedule and/or compensation.

**2.7 Delivery and Use of Electronic Files.** In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the PROFESSIONAL, the OWNER agrees that all such electronic files are instruments of service of the PROFESSIONAL, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The OWNER agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The OWNER agrees not to transfer these electronic files to others without the prior written consent of the PROFESSIONAL. The OWNER further agrees to waive all claims against the PROFESSIONAL resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the PROFESSIONAL.

The OWNER and the PROFESSIONAL agree that any electronic files furnished by either party shall conform to the original specifications. Any changes to the original electronic specifications by either the OWNER or the PROFESSIONAL are subject to review and acceptance by the other party. Additional services by the PROFESSIONAL made necessary by changes to the electronic file specifications shall be compensated for as Additional Services.

Electronic files furnished by either party shall be subject to an acceptance period of fourteen (14) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The OWNER is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the PROFESSIONAL and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the PROFESSIONAL, its officers, directors, employees and subconsultants (collectively, Professional) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the PROFESSIONAL or from any reuse of the electronic files without the prior written consent of the PROFESSIONAL.

Under no circumstances shall delivery of electronic files for use by the OWNER be deemed a sale by the PROFESSIONAL, and the PROFESSIONAL makes no warranties, either expressed or implied, or merchantability and fitness for any particular purpose. In no event shall the PROFESSIONAL be liable for indirect or consequential damages as a result of the OWNER's use or reuse of the electronic files.

**2.8 Opinions of Probable Construction Costs.** In providing opinions of probable construction cost, the OWNER understands that the PROFESSIONAL has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the PROFESSIONAL's opinions of probable construction costs are

made on the basis of the PROFESSIONAL's judgement and experience. The PROFESSIONAL makes no warranty, express or implied that the bids or the negotiated cost of the Work will not vary from the PROFESSIONAL's opinion of probable construction costs.

### SECTION 3

**3.1 Verification of Existing Conditions.** Inasmuch as the remodeling and/or rehabilitation of the existing structures requires that certain assumptions be made by the PROFESSIONAL regarding existing conditions, and because some of these assumptions may not be verifiable without the OWNER's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, the OWNER agrees to bear all costs, losses and expenses, including the cost of the PROFESSIONAL's Additional Services, arising from the discovery of concealed or unknown conditions in the existing structure.

**3.2 Construction Observation.** The PROFESSIONAL shall visit the site if authorized at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the OWNER and the PROFESSIONAL, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the PROFESSIONAL, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

Based on this general observation, the PROFESSIONAL shall keep the OWNER informed about the progress of the Work and shall endeavor to guard the OWNER against deficiencies in the work.

If the OWNER desires more extensive project observation or full-time project representation, the OWNER shall request that such services be provided by the PROFESSIONAL as Additional Services in accordance with the terms of this Agreement.

The PROFESSIONAL shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the contractor in accordance with the Contract Documents.

The PROFESSIONAL shall not be responsible for any acts or omissions of the contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The PROFESSIONAL does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

**3.3 Jobsite Safety.** Neither the professional activities of the PROFESSIONAL, nor the presence of the PROFESSIONAL or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety

precautions required by any regulatory agencies, the PROFESSIONAL and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the OWNER, the PROFESSIONAL and the PROFESSIONAL's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.

**3.4 Design Without Construction Administration.** Unless Authorized, it is understood and agreed that the PROFESSIONAL's Basic Services under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided for by the OWNER. The OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the OWNER waives any claims against the PROFESSIONAL that may be in any way connected thereto.

**3.5 Client Requested Substitutions.** Upon request by the OWNER, the PROFESSIONAL shall evaluate and make recommendations regarding substitutions of materials, products or equipment proposed by the OWNER's consultants or contractors. The PROFESSIONAL shall be compensated for these services, as well as any services required to modify and coordinate the construction documents prepared by the PROFESSIONAL with those of the PROFESSIONAL's subconsultants and the OWNER's consultants, as Additional Services. The PROFESSIONAL also shall be entitled to an adjustment in schedule caused by this additional effort.

**3.6 Record Drawings.** If authorized by the Agreement, upon completion of the Work, the PROFESSIONAL shall compile for and deliver to the OWNER a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor. These Record documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which the PROFESSIONAL shall assume will be reliable, the PROFESSIONAL cannot and does not warrant their accuracy.

**3.7 Certifications, Guarantees and Warranties.** The PROFESSIONAL shall not be required to sign any documents, no matter by whom requested, that would result in the PROFESSIONAL's having to certify, guarantee or warrant the existence of conditions whose existence the PROFESSIONAL cannot ascertain. The OWNER also agrees not to make resolution of any dispute with the PROFESSIONAL or payment of any amount due to the PROFESSIONAL in any way contingent upon the PROFESSIONAL's signing any such certification.

**3.8 Contingency Fund.** The OWNER and the PROFESSIONAL agree that certain increased cost and changes may be required because of possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by the PROFESSIONAL and, therefore, that the final construction cost of the Project may exceed the estimated construction cost. The OWNER agrees to set aside a reserve in the amount of 10 percent of the Project construction costs as a contingency to be used, as required, to pay for any such increased costs and changes. The OWNER further agrees to make no claim by way of direct or third-party action against the PROFESSIONAL or its subconsultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

**3.9 Permits and Approvals.** The PROFESSIONAL shall assist the OWNER in applying for those permits and approvals normally required by law for projects similar to the one for which the PROFESSIONAL's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the PROFESSIONAL and included in the scope of Basic Services of this Agreement.

**3.10 Statutes of Repose and Limitation.** All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run no later than the date of Substantial Completion. If the act or failure to act complained of occurred after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the PROFESSIONAL's services are completed or terminated.

**3.11 Construction Layout.** If requested by the Owner, or other authorized party, as detailed in the scope of services or as an Additional Service to this Agreement, the PROFESSIONAL shall provide construction layout stakes sufficient for construction purposes. The stakes will reflect pertinent information from the construction bidding and contract documents. The stakes shall be set in place one time by the PROFESSIONAL, staged and scheduled as requested by the Contractor. After the stakes are set, it shall be the Contractor's exclusive responsibility to protect the stakes from damage or removal. Once the stake is set, if the stake becomes unusable due to the Contractor's negligence it shall be reset by the PROFESSIONAL, only at the Contractor's direction. The cost for resetting the stakes shall be borne by the Contractor and shall be paid by the Owner or authorized representative of this Agreement to the PROFESSIONAL from monies due the Contractor from the construction contract. The Owner acknowledges and agrees that these staking requirements and the procedures and payments for restaking described in this section shall be stipulated in the General Conditions of the construction contract.

These General Conditions shall be attached to and made part of the Agreement between Spicer Group, Inc. (PROFESSIONAL) and the Owner.



301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599 • FAX (989) 723-8854

---

# ***MEMORANDUM***

---

DATE: April 24, 2015

TO: City Council

FROM: Kevin Lenkart  
Director of Public Safety

RE: Traffic Control Order #1331

---

Rosmarie Curnutt, owner of Tamale Rose, proposes the use of the first three parking spots on the north side of Exchange Street next to Water Street. This request is for the purpose of selling food from a vending trailer. The requested dates and times are:

May 1, 2015 through December 1, 2015  
7 days per week as weather permits  
10 am – 2 pm

The Public Safety Department has issued Traffic Control Order No# 1331 in accordance with the Rules for the Issuance of Certain Traffic Control Orders. Staff recommends approval and further authorization of a traffic control order formalizing the action.

**CITY OF OWOSSO**  
**TRAFFIC CONTROL ORDER**

*(SECTION 2.53 UNIFORM TRAFFIC CODE)*

ORDER NO.	DATE	TIME
1331	April 24, 2015	11:30 am

**REQUESTED BY**  
Kevin Lenkart – Director of Public Safety

**TYPE OF CONTROL**  
For the use of the first three parking spots on the north side of Exchange St. next to Water St.

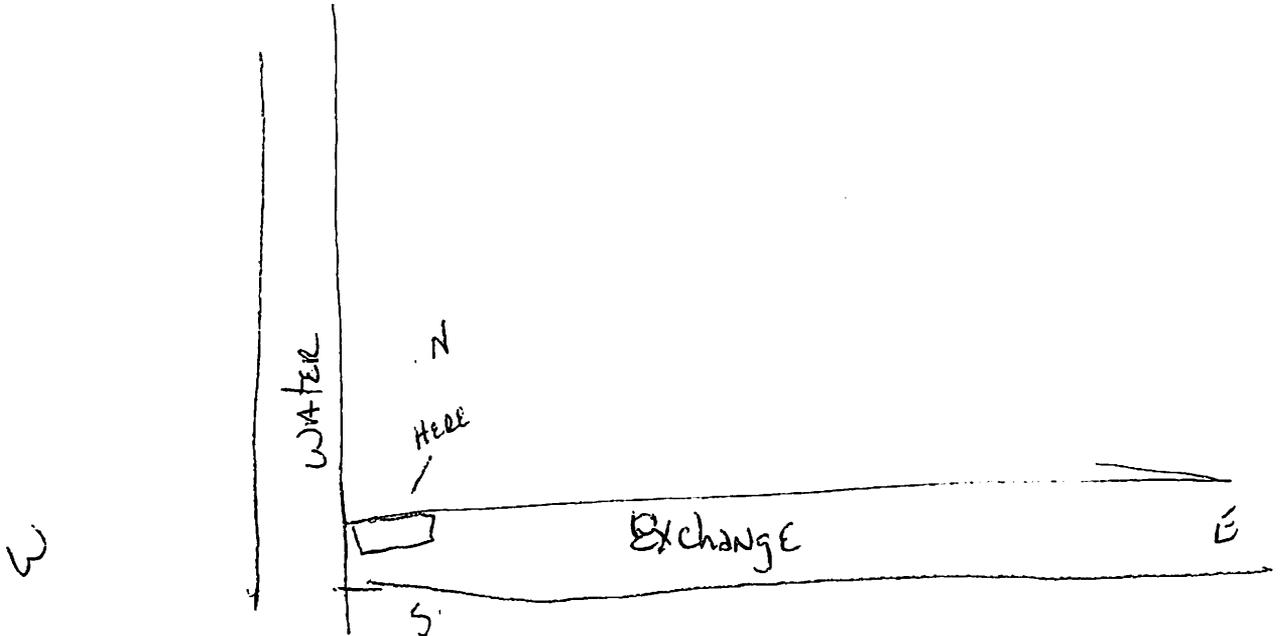
**LOCATION OF CONTROL**  
First three parking spots on the north side of Exchange St. next to Water St.

**EVENT**  
Tamale Rose – vending trailer

**APPROVED BY COUNCIL**  
\_\_\_\_\_, 20 \_\_\_\_

**REMARKS**

APPLICATION FOR USE OF  
PARKING LOTS, PARADES, OR SIMILAR EVENTS



301 W. MAIN OWOSSO, MICHIGAN 48867-2958 · (989) 725-0550 · FAX 725-0526

The request for use of the parking lots, parade, or similar event shall be submitted to the Director of Public Safety not less than 14 days nor more than 120 days before the date for which the use is requested.

The submission of a request by an individual or organization for a traffic control order pursuant to these rules and regulations shall constitute an agreement to indemnify and hold the City and its officers and employees harmless from any and all liability arising from the event or activities for which the request is made.

Name of individual or group: Tamale Rose Date: 4-15-15

Primary Contact Person  
Name: ROSMAE CURRANT

Title: OWNER

Address: 3957 McClellan Rd  
OWOSSO MI 48867

Phone: 989 980 0116

Requested Date(s): MAY - DEC <sup>weather NOT</sup> <sub>perm. - EVERY day</sub> Requested Hours: 10am - 2pm

Area Requested (Parking Lot - Parade Route): IN FRONT of old phone company

-----

17

-----

-----

The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are listed in a column, and the addresses are listed in a column to the right. The names are: [Illegible names]. The addresses are: [Illegible addresses].

The second part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are listed in a column, and the addresses are listed in a column to the right. The names are: [Illegible names]. The addresses are: [Illegible addresses].

The third part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are listed in a column, and the addresses are listed in a column to the right. The names are: [Illegible names]. The addresses are: [Illegible addresses].

The fourth part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are listed in a column, and the addresses are listed in a column to the right. The names are: [Illegible names]. The addresses are: [Illegible addresses].

The fifth part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are listed in a column, and the addresses are listed in a column to the right. The names are: [Illegible names]. The addresses are: [Illegible addresses].

Detailed description of the use for which the request is made: Use of parking spot  
of old phone company to sell food from trailer

Attach copies of any rules or policies applicable to persons participating in the event.

Evidence to the City of insurance coverage applicable to the event or activity naming the City as an additional insured in an amount of not less than \$500,000 combined single limit.

or

The City Council may waive such insurance requirement if it determines that insurance coverage is unavailable or cannot be obtained at a reasonable cost and the event or activity is in the public interest or fulfills a legitimate and recognized public purpose.

.....  
Do Not Write Below This Line - For Officials Use Only

Approved      Not Approved      Date: \_\_\_\_\_      Traffic Control Order Number \_\_\_\_\_

Cc:      DDA - Director  
            WCIA - Chairperson



**MEMORANDUM**

---

301 W MAIN • OWOSSO, MICHIGAN 48867-2958 •  
WWW.CI.OWOSSO.MI.US

---

**DATE:** May 1, 2015  
**TO:** Mayor Frederick and the Owosso City Council  
**FROM:** Kevin Lenkart, Director of Public Safety  
**SUBJECT:** Ambulance Cot and Stair Chair Purchase

**RECOMMENDATION:**

City staff recommends council approve the purchase of two (2) Stryker cots to be used for patient care. The two cots recommended for purchase are one Stryker 6082 MX-Pro (with options) \$5,430.05 and Stryker 6252 Stair-Pro (stair chair, with options) \$2,983.00. The total cost will be \$8,413.05.

**BACKGROUND:**

Included in the 2015 budget is money for the purchase of cots for the new ambulance for the Public Safety Department. The two cots listed above will be needed for the ambulance scheduled to be delivered in 2015.

**FISCAL IMPACTS:**

Payment for this purchase shall come from account 101-335-978.000

**RESOLUTION \_\_\_\_\_**

**RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR  
PURCHASE OF TWO COTS FOR AMBULANCE SERVICE**

WHEREAS, the City of Owosso, Shiawassee County, Michigan, has fire department requiring the use of cots for an ambulance; and

WHEREAS, the City of Owosso requested bids and it is hereby determined that Kodiak Emergency Vehicles is qualified to provide such cots and that it has submitted the responsible and responsive bid;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has theretofore determined that it is advisable, necessary and in the public interest to purchase one (1) Stryker 6082 MX-Pro Cot at a price of \$5,430.05.00 and one (1) Stryker 6252 Stair-Pro at a price of \$2,983.00 for a total price of \$8,413.05 from Kodiak Emergency Vehicles.
- SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached, Contract for Services between the City of Owosso, Michigan and Kodiak Ambulance up to the amount of \$8,413.05.
- THIRD: The above expenses shall be paid from the Fire Division Equipment fund 101-335-978.000.
- FOURTH: Authorize payment to Kodiak Emergency Vehicles in the amount of \$8,413.05 upon delivery of the cots.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO, SHIAWASSEE COUNTY, MICHIGAN THIS 4th DAY OF May 2015.

AYES:  
NAYS:  
ABSTENTIONS:  
ABSENT:

CITY OF OWOSSO

ATTEST:

\_\_\_\_\_  
Benjamin R. Frederick, Mayor

\_\_\_\_\_  
Amy K. Kirkland, City Clerk



1340 S. WAVERLY ROAD STE. 3, LANSING, MI 48917  
PHONE: 517-803-4268 FAX: 517-827-4969

## PROPOSAL

**PROPOSAL TO:** CITY OF OWOSSO April 14, 2015  
301 W. MAIN STREET  
OWOSSO, MICHIGAN 48867

**PROPOSAL FOR:** Stryker 6082 MX-Pro Cot (with options) and Stryker 6252 Stair-Pro (stair chair, with options)

**LEAD-TIME/DELIVERY:** We are being told that if ordered prior to 4/18/15, the cot can be supplied the first week in May, 2015. Normal lead-times for the Stryker cot are 5-6 weeks.

Stair Chair, approx. 4 days after receipt of order (demo)

**PROPOSAL PRICE:** Includes:

- Stryker 6082 MX-Pro Cot = \$4,654.00
- Ergonomic Package with safety bar = \$184.45
- 3 Stage IV Pole, patient right = \$305.15
- Removable O2 Bottle holder = \$164.05
- Flat Head End Storage Pouch = \$122.40
- Total for cot and options = \$5,430.05**

- Stryker 6252 Stair-Pro (quoting a “demo”) = \$2,983.00
- Foot support = included in price above
- Head Support/Strap = included in price above
- Total for stair chair and options = \$2,983.00**

Stryker 6082 MX-Pro Cot with options	= \$5,430.05
Stryker 6252 Stair-Pro with options	= \$2,983.00
<b>TOTAL COST</b>	<b>= \$8,413.05</b>



1340 S. WAVERLY ROAD STE. 3, LANSING, MI 48917  
PHONE: 517-803-4268 FAX: 517-827-4969

## AGREEMENT

THIS AGREEMENT is made between Kodiak Emergency Vehicles, 1340 S. Waverly Road, Lansing, MI 48917 ("COMPANY") and The City of Owosso, Michigan, 301 W. MAIN STREET OWOSSO, MICHIGAN 48867 ("Buyer"). THE COMPANY agrees to sell and the BUYER agrees one (1) Stryker Stair-PRO Model 6252 with options and one (1) Stryker 6082 Cot MX-Pro R3 with options, as described in the COMPANY'S proposal, all in accordance with the terms and conditions of the Agreement.

BUYER AGREES to pay a CONTRACT PRICE of \$8,413.05 for two (2) Osage Ambulances, one (1) Stryker Stair-PRO Model 6252, one (1) Stryker 6082 Cot MX-Pro R3, and one (1) Stryker MX-Pro Bariatric Transport.

CONTRACT PRICE: \$8,413.05  
DOWN PAYMENT OF: \$0.00

**BALANCE DUE AT TIME OF AGREEMENT: \$0.00**  
**BALANCE DUE UPON FINAL DELIVERY: \$8,413.05**

NOTE - Other changes or equipment additions will be invoiced OR credited separately upon completion and delivery. Unless otherwise specified, the Purchase Price is exclusive of all Federal, State, and Local Taxes of any nature.

IN WITNESS WHEREOF, the Company and the Buyer have caused this Agreement to be executed by their duly authorized representatives as of the date set forth by each.

**BUYER: The City of Owosso, Michigan**

By: \_\_\_\_\_  
PRINT SIGNATURE

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**COMPANY: Kodiak Emergency Vehicles**

By: AHREN TASZREAK  
PRINT SIGNATURE

Title: VP of Sales and Operations Date: \_\_\_\_\_

**RESOLUTION NO.**

**FIRST READING & SET PUBLIC HEARING TO CONSIDER THE PROPOSED FISCAL YEAR 2015/2016  
BUDGET FOR THE CITY OF OWOSSO**

WHEREAS, pursuant to Section 8-4 of the Owosso City Charter and in accordance with Michigan Compiled Laws 15.261 – 15.275 and 141.411 – 141.415, a hearing on any budget of local units empowered to prepare budgets of estimated expenditures and revenues; and

WHEREAS, MCL141.412 requires that a notice of such hearing be given by publication in a newspaper of general circulation at least six (6) days prior to such hearing; and

WHEREAS, Public Act #40 of 1995 provides that in order to avoid the necessity of holding a truth in taxation hearing, that a municipality must include a statement in its budget hearing notice that the property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing.

NOW, THEREFORE, BE IT RESOLVED, that a hearing will be held by the City Council in the City Council Chambers, Owosso City Hall, 301 West Main Street, Owosso, Michigan on Monday, May 18, 2015 at 7:30pm to receive citizen comment.

## ORDINANCE

### ORDINANCE TO ADD TO THE CODE OF ORDINANCES CHAPTER 5 ANIMALS ARTICLE IV-FERAL/STRAY CAT TRAP-NEUTER-RETURN

WHEREAS, communities across the country (urban, suburban, rural) are faced with growing feral/stray cat populations;

WHEREAS, a local law addressing community cats will reduce the population of free-roaming cats, positively affect potential disease and nuisance concerns, and improve the quality of life for the citizens of Owosso;

WHEREAS, approaches like trap-and-euthanize have failed to solve the problem;

WHEREAS an increasing number of communities are enacting local laws to regulate and support the practice of Trap-Neuter-Return (TNR) programs as a solution;

WHEREAS, an ordinance authorizing TNR is needed due to other existing ordinances such as feeding bans, a maximum number of animals per household, requirements against cats being at large, etc. which effectively impede TNR efforts;

WHEREAS, these provisions can make it difficult/impossible for caretakers, the individuals who manage colonies of cats, to do their work legally, making an ordinance allowing TNR and exempting caretakers from these other laws a prerequisite for the establishment of a community-wide TNR program;

WHEREAS, it is in the community's best interest to identify colonies and their caretakers, and offer resources to care responsibly for the cats through TNR;

WHEREAS, the goal is to establish reasonable standards for performing TNR by providing protections to caretakers who adhere to the ordinance's terms and conditions and by clearly defining the duties of all involved parties, including caretakers, animal welfare organizations, animal control agencies and the city; and

WHEREAS, it is in the best interest of the city of Owosso to protect the health, safety and welfare of residents through managed care of community cats by setting the following standards;

NOW THEREFORE BE IT ORDAINED by the city council of the city of Owosso, Michigan, Shiawassee County, Michigan that The Code of Ordinances be amended as follows:

Section 1: By adding to Chapter 5 Animals an Article IV Feral/Stray Cat Trap-Neuter-Return

#### ARTICLE IV. - FERAL CAT TRAP-NEUTER-RETURN

##### **Sec. 5-40 Purpose.**

The purpose of this article is to set the following standards for management of feral and community cats.

##### **Sec. 5-41 Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the content clearly indicates a different meaning.

**Caretaker** means any person who regularly provides food /water/shelter to a feral cat colony.

**Cat care organization** means the organization recognized by the city to oversee a trap-neuter-return (TNR) program to reduce the feral cat population, benefitting public health, improving the quality of life for residents, and ensuring the humane treatment of feral/stray cats.

**Eartip** means a mark identifying a feral or stray cat as having been sterilized, specifically, the removal of the tip of the cat's left ear while the cat is anesthetized.

**Feral cat** means a cat that is free roaming, not socialized to people and not an owned cat.

**Feral cat colony** and **colony** mean a group of feral or stray cats that congregate, more or less, together as a unit and share a common food source.

**Foster home** means a household in which cat(s)/kitten(s) are temporarily placed for providing shelter, care and, if necessary, socialization before permanent placement in an adoptive home.

**Kitten** means a member of the species *felis catus* under the age of 10 weeks.

**Nuisance** means conduct by feral or stray cat that disturbs the peace, including (a) habitually or continually howling or making loud noises and (b) destroying property.

**Owened cat** means a cat that is a companion to a person, is regularly fed and is sheltered in that same person's habitation.

**Shelter** means a structure that provides feral/stray cats with protection from weather-related elements and natural enemies.

**Sterilize** means to spay or neuter.

**Stray cat** means a cat that is socialized to humans and is not an owned cat.

**TNR** means the method of managing feral and stray cats known as trap-neuter-return.

**TNR program** means a program pursuant to which feral and stray cats are trapped, sterilized, vaccinated against rabies, eartipped, and returned to the location where they were captured and provided with long-term care by a caretaker.

#### **Sec. 5-42 Management of feral cat colonies.**

A TNR program shall be permitted and caretakers shall be entitled to maintain feral cat colonies according to the terms and conditions of this Article.

#### **Sec. 5-43 Caretaker requirements.** It shall be the responsibility of a caretaker to:

- (a) register all feral cat colonies managed by the caretaker with the cat care organization pursuant to the requirements of Sec. 5-44;
- (b) make reasonable efforts to trap all cats in a registered colony and have all trapped cats sterilized, vaccinated against rabies and eartipped by a licensed veterinarian;

- (c) provide or arrange for the provision of adequate food and water on a regular basis to colony cats and make reasonable efforts to ensure adequate shelter for colony cats;
- (d) make reasonable efforts to trap and obtain proper medical attention for any colony cat that appears to require it;
- (e) make reasonable efforts to remove, socialize, and find permanent adoptive homes or foster homes for kittens born to colony cats; and
- (f) make reasonable efforts to work with the city and the cat care organization to resolve any complaints concerning the colony of cats managed by the caretaker.

**Sec. 5-44 Feral cat colony registration.** Upon registration of a feral cat colony, the caretaker shall provide the cat care organization with:

- (a) address, telephone number and, if applicable, email address of the caretaker;
- (b) location of the colony; and
- (c) approximate number of cats in the colony and the number currently sterilized/vaccinated.

**Sec. 5-45 Change of caretaker.** If a caretaker is unable or unwilling to continue in that role, the caretaker shall notify the cat care organization and shall make reasonable efforts to secure a replacement caretaker.

**Sec. 5-46 Ordinance enforcement.**

Nothing in this Article shall interfere with the right of the city to:

- (a) investigate nuisance complaints allegedly caused by a feral or stray cat or feral cat colony. If a cat/cats belonging to a registered feral cat colony is causing a significant nuisance, the city shall give the caretaker written notice delineating the nuisance and location of the cat or cats with specificity, including the person making the complaint. The caretaker shall have thirty (30) days from the date that written notice was provided to alleviate the nuisance. If the caretaker fails to effectively address the nuisance after thirty (30) days, the city shall have the right to remove the offending cat or cats;
- (b) seize and remove a registered feral cat colony if the caretaker regularly fails to comply with the requirements of Sec. 5-43 and the caretaker does not correct the situation within sixty (30) days of being given written notice by the city delineating the failures with specificity;
- (c) a caretaker in compliance with this Article shall be exempt from all provisions of this code that impose requirements on cats that are owned, kept, harbored, or in the custody of a person.

**Section 2. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this amendment for any reason is held

invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3. Effective Date.

This ordinance shall take effect after its passage, approval and publication according to law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO, SHIAWASSEE COUNTY, MICHIGAN THIS \_\_\_TH DAY OF MAY 2015.

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

\_\_\_\_\_  
Benjamin Frederick, mayor

\_\_\_\_\_  
Amy Kirkland, city clerk

**RESOLUTION NO.**

**RESOLUTION AUTHORIZING EXECUTION OF AN ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITIES AND PAYMENT OF RESPONSE ACTIVITY COSTS WITH THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

WHEREAS, the City of Owosso was considered to be a potentially responsible party and became a party to proceedings under Section 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, with respect to the Shiawassee Sanitary Landfill; and

WHEREAS, in August 2009 the City of Owosso joined the Shiawassee Sanitary Landfill PLP Group (MDEQ Reference No. AOC-RRD-13-002) which consists of other potentially responsible parties; and

WHEREAS, an *Administrative Order by Consent for Response Activities and Payment of Response Activity Costs with the Michigan Department of Environmental Quality* has been prepared, which is attached as Exhibit A.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: the City Council finds it in the best interest of the City to join with the members of the Shiawassee Sanitary Landfill PLP Group ( MDEQ Reference No. AOC-RRD-13-002) to enter into the *Administrative Order by Consent for Response Activities and Payment of Response Activity Costs with the Michigan Department of Environmental Quality* attached as Exhibit A.

SECOND: the Mayor and City Clerk are authorized to execute the *Administrative Order by Consent for Response Activities and Payment of Response Activity Costs with the Michigan Department of Environmental Quality*.

*I hereby certify that the foregoing document is a true and complete copy of a resolution passed by the Owosso City Council at the regular meeting of \_\_\_\_\_ 2015.*

\_\_\_\_\_  
Amy K. Kirkland, City Clerk

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

The Shiawassee Sanitary Landfill Group  
Shiawassee Sanitary Landfill  
Owosso Township,  
Shiawassee County, Michigan

MDEQ Reference No. AOC-RRD-13-002

Proceeding under Section 20134(1) of Part 201, Environmental Remediation, of the  
Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

---

**ADMINISTRATIVE ORDER BY CONSENT  
FOR RESPONSE ACTIVITIES AND  
PAYMENT OF RESPONSE ACTIVITY COSTS**

**ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITIES  
TABLE OF CONTENTS**

I. JURISDICTION ..... 2  
II. DENIAL OF LIABILITY ..... 2  
III. PARTIES BOUND ..... 2  
IV. STATEMENT OF PURPOSE ..... 3  
V. DEFINITIONS ..... 4  
VI. FINDINGS OF FACT AND DETERMINATIONS ..... 6  
VII. PERFORMANCE OF RESPONSE ACTIVITIES ..... 8  
VIII. COMPLIANCE WITH STATE AND FEDERAL LAWS ..... 12  
IX. ACCESS ..... 13  
X. EMERGENCY RESPONSE ..... 14  
XI. FORCE MAJEURE ..... 15  
XII. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES ..... 17  
XIII. SUBMISSIONS AND APPROVALS ..... 19  
XIV. REIMBURSEMENT OF COSTS ..... 20  
XV. STIPULATED PENALTIES ..... 23  
XVI. DISPUTE RESOLUTION ..... 25  
XVII. INDEMNIFICATION AND INSURANCE ..... 27  
XVIII. COVENANTS NOT TO SUE BY THE STATE ..... 29  
XIX. RESERVATION OF RIGHTS BY THE STATE ..... 30  
XX. COVENANT NOT TO SUE BY RESPONDENTS ..... 32  
XXI. CONTRIBUTION ..... 32  
XXII. MODIFICATIONS ..... 33  
XXIII. SEPARATE DOCUMENTS ..... 33  
XXIV. SEVERABILITY ..... 33

**ATTACHMENTS**

- Attachment 1 – Property Description
- Attachment 2 – Cost Summary Report
- Attachment 3 – Map depicting the Project Area
- Attachment 4 – List of Homes with Drinking Water Criteria Exceedences
- Attachment 5 – List of Homes with Detections Alleged to Originate from the Facility
- Attachment 6 – List of Homes Subject to Drinking Water Monitoring Requirements

## **I. JURISDICTION**

This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ); the Michigan Department of Attorney General (MDAG); and Wolverine Sign Works, Johnson Controls, Inc., Maurer Heating and Cooling Co., Consumers Energy Company, Ford Motor Company, Owosso Public Schools, City of Owosso, Shiawassee County Road Commission, Shiawassee County Courthouse, The Argus-Press Company, and ConAgra Foods, Inc., collectively referred to from here on as “Respondents”, pursuant to the authority vested in the MDEQ and the MDAG by law, including Section 20134(1) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This Order concerns the performance by Respondents of certain response activities at or nearby the former Shiawassee Sanitary Landfill, Owosso Township, Shiawassee County, Michigan (“Landfill”).

## **II. DENIAL OF LIABILITY**

The execution of this Order by Respondents is neither an admission or denial of liability with respect to any issue dealt with in this Order, nor an admission or denial of any factual allegations or legal determinations stated or implied herein.

## **III. PARTIES BOUND**

3.1 This Order shall apply to and be binding upon Respondents and the State and their successors. Wolverine Sign Works, Johnson Controls, Inc., Maurer Heating and Cooling Co., Consumers Energy Company, Ford Motor Company, Owosso Public Schools, City of Owosso, Shiawassee County Road Commission, Shiawassee County Courthouse, The Argus-Press Company, and ConAgra Foods, Inc. are jointly and severally liable for the performance of all activities specified in this Order and for any penalties that may arise from violations of this Order. Any change in ownership, corporate, or legal status of any Respondent, including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter a Respondent’s

responsibilities under this Order. To the extent that any Respondent is or becomes the owner of a part or all of the Facility, Respondents shall provide the MDEQ with written notice prior to its transfer of ownership of part or all of the Facility and shall provide a copy of this Order to any subsequent owners or successors prior to the transfer of any ownership rights. Respondents shall comply with the requirements of Section 20116 of the NREPA, MCL 324.20116; and the Part 201 Administrative Rules (Part 201 Rules) in the manner set forth in this Order.

3.2 Notwithstanding the terms of any contract that Respondents may enter with respect to the performance of response activities pursuant to this Order, Respondents are responsible for compliance with the terms of this Order and shall ensure that their contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Order.

3.3 The signatories to this Order certify that they are authorized to execute this Order and to legally bind the parties they represent.

#### **IV. STATEMENT OF PURPOSE**

In entering into this Order, it is the mutual intent of the Parties to:

- (a) To the extent it is applicable, achieve and maintain compliance with Section 20107a(1) of the NREPA, and the Part 201 Rules in the manner set forth in this Order;
- (b) Perform response activities specified in Paragraph 7.1 of this Order;
- (c) Conduct all work specified in this Order by the date specified in Paragraph 7.1 of this Order;
- (d) Minimize litigation;
- (e) Reimburse the State for Past and Future Response Activity Costs as described in Section XV (Reimbursement of Costs) of this Order;

**V. DEFINITIONS**

5.1 “Day” means a calendar day.

5.2 “Effective Date” means the date the RRD Chief signs this Order.

5.3 “Facility” means any area where a hazardous substance released from the Property identified in Attachment 1 of this Order, in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use, has been released, deposited, disposed of, or otherwise comes to be located.

5.4 “FAM” means financial assurance mechanism, provided by Respondents to assure the long-term operation and maintenance, monitoring, and ensuring the integrity and effectiveness of the response activities performed at the Property.

5.5 “Future Response Activity Costs” means all costs incurred by the State that are not included in Attachment 2 of this Order, to develop this Order, oversee, enforce, monitor, and document compliance with this Order, and to perform response activities required by this Order, including, but not limited to, costs incurred to: monitor response activities at the Project Area, observe and comment on field activities, review and comment on Submissions, collect and analyze samples, evaluate data, purchase equipment and supplies to perform monitoring activities, attend and participate in meetings, prepare and review cost reimbursement documentation, and perform response activities pursuant to Paragraph 7.6 (The MDEQ’s Performance of Response Activities) and Section X (Emergency Response) of this Order. Contractor costs are also considered Future Response Activity Costs to the extent that they are incurred in conjunction with the above-described activities.

5.6 “MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

5.7 “Part 201” means Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.*, criteria developed pursuant to MCL324.20120(a)(1), and the Part 201 Administrative Rules.

5.8 “Party” means either Respondents or the State. “Parties” means Respondents and the State.

5.9 “Past Response Activity Costs” means response activity costs that the State incurred as set forth in the attached Summary Report, Attachment 2, prior to the Effective Date of this Order that are not otherwise defined as Future Response Activity Costs in Paragraph 5.5 of this Order.

5.10 “Project Area” means the area contained within the boundaries depicted on Attachment 3 of this Order.

5.11 “Property” means the property described in the legal description provided in Attachment 1 of this Order.

5.12 “Respondent” means one of the following individual entities: Wolverine Sign Works, Johnson Controls, Inc., Maurer Heating and Cooling Co., Consumers Energy Company, Ford Motor Company, Owosso Public Schools, City of Owosso, Shiawassee County Road Commission, Shiawassee County Courthouse, The Argus-Press Company, and ConAgra Foods, Inc., and their successors. “Respondents” means all of the aforementioned entities, collectively.

5.13 “Response Activity Costs” means all costs incurred in taking or conducting a response activity, including enforcement costs.

5.14 “RRD” means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

5.15 “State” or “State of Michigan” means the MDAG and the MDEQ, and any authorized representatives acting on their behalf.

5.16 “Submissions” means all plans, reports, schedules, and other submissions that Respondents are required to provide to the State or the MDEQ pursuant to this Order. “Submissions” does not include the notifications set forth in Section XI (*Force Majeure*) of this Order.

5.17 Unless otherwise stated herein, all other terms used in this Order, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201 Rules, shall have the same meaning in this Order as in Part 3, Part 201 and the Part 201 Rules.

## **VI. FINDINGS OF FACT AND DETERMINATIONS**

The State makes the following Findings of Fact and Determinations.

6.1 The Property is a former gravel pit that was licensed as a landfill under the former Garbage and Refuse Disposal Act, 1965 PA 87, as amended (Act 87) from 1967 to 1974, and was owned and operated by Mr. Frank Fisher. The property on which the landfill is located is presently owned by Evergreens, Inc., a company created by Mr. Fisher in 1983.

6.2 Several substances that are “hazardous substances” as that term is defined in Section 20101(1)(y) of the NREPA, are present at and emanate from the Property in concentrations in excess of the Part 201 cleanup criteria for unrestricted residential use.

6.3 The Property is a Facility as that term is defined in Section 20101(1)(s) of the NREPA.

6.4 An investigation and periodic monitoring of private wells downgradient from the Property indicate that volatile organic compounds (VOCs) are emanating from

the Property and flowing northerly and easterly towards residential private water supplies. Analytical data obtained from at least one private drinking water well demonstrates levels of contamination that exceed the Part 201 residential drinking water criteria. Landfill waste continues to exist at the Facility and is in contact with the water table. The continued presence of these substances at the Facility and continued migration of these substances constitutes a “release or threatened release” within the meaning of Section 20101(1)(mm) and 20101(1)(vv) of the NREPA.

6.5 Each Respondent is a “person” as that term is defined in Section 301(h) of Part 3 of the NREPA. “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

6.6 The following persons are liable pursuant to Section 20126 of the NREPA.

(a) The State alleges that each Respondent, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport, disposal, or treatment of a hazardous substance owned or possessed by that Respondent at the Facility. Information in the MDEQ’s files indicates that each Respondent may have possessed and arranged for the transport of hazardous substances to the Facility and that hazardous substances of the same kind owned or possessed by each Respondent are present at the Facility. Therefore, the State alleges that each Respondent is a person who is liable pursuant to Section 20126(1)(d) of the NREPA.

6.7 In order to protect public health, safety, and welfare, and the environment, and to abate the danger or threat caused by the release or threat of release of hazardous substances at the Facility, it is necessary and appropriate that response activities provided in the Order be performed at the Facility.

On the basis of these Findings of Fact and Determinations, the State has determined that entry of this Order will expedite the performance of response activities; that Respondents will properly perform the response activities required by this Order; and that the entry of this Order is in the public interest and will minimize litigation.

BASED ON THE FOREGOING ALLEGED FACTS AND DETERMINATIONS, RESPONDENTS, WITHOUT ADMITTING THE FOREGOING ALLEGED FACTS AND DETERMINATIONS, HEREBY AGREE TO PERFORM THE RESPONSE ACTIVITIES AND PAY STATE-INCURRED RESPONSE ACTIVITY COSTS AS SPECIFIED IN THIS ORDER.

## **VII. PERFORMANCE OF RESPONSE ACTIVITIES**

### 7.1 Response Activities

Respondents shall perform, at their option, all of the response activities in either subparagraph (a) or (b):

(a) Within two (2) years of the Effective Date, if Owosso Charter Township passes an ordinance requiring all homeowners in the Project Area to (i) connect to the municipal drinking water supply, (ii) abandon any existing groundwater wells, and (iii) not conduct future groundwater withdrawal, Respondents shall extend and connect all homes in the Project Area to a municipal drinking water supply.

(b) Within three (3) years of the Effective Date, Respondents shall perform all the following response activities at the Facility pursuant to this Order.

(i) Respondents shall extend municipal drinking water mains to points accessible to all properties within the Project Area;

(ii) Respondents shall connect municipal drinking water supply to (1) the homes at the addresses listed on Attachment 4 of this Order and (2) all homes in the Project Area where analytical data obtained from the private drinking water well collected after the Effective Date confirms, based on the results of two (2) consecutive sampling events, that a drinking water source does not meet Michigan residential drinking water criteria for VOCs. For purposes of this Paragraph 7.1(b) and 7.3, a second sampling event shall be conducted within thirty (30) days of initial sampling suggesting that a drinking water source may not meet Michigan residential drinking water criteria for VOCs.

(iii) Respondents shall also connect municipal drinking water supply to all other homes in the Project Area where the property owner consents in writing

within two (2) years of the Effective Date to: (1) connection to the municipal drinking water supply; (2) abandonment of any existing groundwater well, and (3) execution and filing of a restrictive covenant prohibiting future groundwater withdrawal. Respondents cannot refuse to connect any property owner to the municipal drinking water supply based upon the refusal of any such property owner to consent to commercially unreasonable conditions for connection.

(c) Respondents shall ensure that all water wells (drinking or otherwise) existing at the homes contained in the Project Area and connected to the municipal drinking water supply pursuant to Paragraph 7.1(a) and (b) are properly abandoned once municipal drinking water supply has been extended and connected. Respondents must complete all abandonment activities within the time frames set forth in Paragraphs 7.1(a) or (b), whichever is applicable.

(d) Any delay to obtain consent to perform response activities specified in Paragraph 7.1 (a), (b) or (c) of this Order, from any owners, lessees or occupiers of the homes contained in the Project Area shall not be an excuse for any delay in completing those response activities, except to the extent they qualify as *Force Majeure* pursuant to Section XII of this Order.

(e) The response activities contained in Paragraph 7.1(a), (b) and (c) of this Order, may be performed by any or all Respondents, or by a third party. However failure by a third party to perform these response activities shall not be an excuse for Respondents' failure to complete the response activities contained in Paragraph 7.1 of this Order.

## 7.2 Documentation of Compliance with Section 20107a of the NREPA.

To the extent that any Respondent(s) owns or operates a part or all of the Facility, that Respondent(s) shall maintain and upon the MDEQ's request, submit documentation to the MDEQ for review and approval that summarizes the actions Respondent(s) has taken or is taking to comply with Section 20107a(1) of the NREPA, and the related Part 201 Rules. Failure of the Respondent(s) to comply with the requirements of this Paragraph, Section 20107a of the NREPA; or the Part 201 Rules in the manner set forth in this Order, shall constitute a violation of this Order and that

Respondent(s) shall be subject to the provisions of Section XVI (Stipulated Penalties) of this Order.

### 7.3 Interim Response Activities

(a) Within 15 days of the Effective Date, Respondents shall provide an alternate drinking water source to the homes at the addresses listed on Attachment 4 of this Order. Respondents' obligation as to each listed home shall terminate when that home is connected to the municipal drinking water supply as set forth in Paragraph 7.1, or otherwise, as set forth in Paragraph 7.3(d), below.

(b) Respondents shall provide for quarterly drinking water monitoring for VOCs in January, April, July, and October of each year for the homes at the addresses listed on Attachment 4 of this Order. Respondents shall provide for annual drinking water monitoring for VOCs in July of each year for all other homes listed on Attachment 6. Respondents' obligation to monitor drinking water quality shall terminate when that home is connected to the municipal drinking water supply as set forth in Paragraph 7.1, or after five (5) years of monitoring pursuant to this Paragraph.

(c) If the monitoring conducted pursuant to Paragraph 7.3(b) of this order confirms, based upon the results of two (2) consecutive sampling events, that a drinking water source does not meet Michigan residential drinking water criteria due to impacts from the Property, Respondents shall immediately provide an alternate water source to the homes served by those drinking water sources, and shall connect the municipal water supply to the home(s), pursuant to Paragraph 7.1(b) of this Order. Respondents shall have the burden of proving that any impact is not solely attributable to the Property. Respondents' obligation as to each such home shall terminate when that home is connected to the municipal drinking water supply as set forth in Paragraph 7.1, or otherwise, as set forth in Paragraph 7.3(d), below.

(d) Respondents obligation to provide an alternative drinking water source, or connect the municipal drinking water supply to a home within the Project Area as set forth in Paragraphs 7.1(b) and 7.3 shall terminate 5 years after Effective Date of this Order if the property owner refuses to agree to be connected to the municipal drinking water supply, or at the time the MDEQ Project Manager determines

that the drinking water sources in the Project Area are no longer being impacted by or threatened by releases attributable to the Property, whichever occurs first. Should the owner of a home subject to Paragraph 7.3(a) or (c) above refuse to agree to be connected to the municipal water supply, Respondents' obligations under Paragraphs 7.1(b) and 7.3 shall not terminate on the basis of owner refusal unless Respondents have offered the property owner an incentive to connect consisting of payment of the owner's water bills for 2 years following the connection or the monetary equivalent of such payment.

#### 7.4 Achievement Report

(a) Once Respondents determine the response activities specified in Paragraph 7.1 and 7.3 of this Order have been completed, Respondents agree to submit an Achievement Report to the MDEQ for review and approval.

(b) The Achievement Report shall include a summary of response activities completed to satisfy this Order, and any supporting documentation and data.

#### 7.5 Progress Reports

(a) Respondents shall provide to the MDEQ Project Manager written Progress Reports regarding response activities and other matters related to the implementation of this Order. These Progress Reports shall include the following:

(i.) A description of the activities that have been taken toward achieving compliance with this Order during the specified reporting period.

(ii.) All results of sampling and tests and other data that relate to the response activities performed pursuant to this Order received by Respondents, their employees, or authorized representatives during the specified reporting period.

(iii.) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how Respondents propose to resolve those issues and the schedule for resolving the issues.

(iv.) A description of the nature and amount of waste materials that

were generated and the name and location of the facilities that were used for the off-site transfer, storage, and treatment or disposal of those waste materials (including copies of all waste manifests).

(v.) A description of data collection and other activities scheduled for the next reporting period.

(vi.) Any other relevant information regarding other activities or matters that affect or may affect the implementation of the requirements of this Order.

(b) Progress Reports shall be submitted to MDEQ on a quarterly basis. The first Progress Report, which shall address activities relating to the initial ninety (90) days, shall be submitted to MDEQ within one hundred and twenty (120) days of the Effective Date of this Order. Each subsequent progress report shall be submitted within 30 days of the ending of the proceeding reporting quarter. Pursuant to Paragraph 23.1 of this Order, the MDEQ may approve modification of the schedule for the submission of Progress Reports.

(c) The obligation to submit Progress Reports under this Section shall terminate upon approval of the Achievement Report pursuant to Paragraph 7.4 of this Order.

(d) Respondents shall provide the MDEQ with the results of all environmental sampling, and other analytical data generated in the performance or monitoring of any requirement under this Order as an attachment to the Progress Reports, and thereafter within ninety (90) days of Respondents' receipt of such data.

(e) Progress Reports do not require MDEQ approval pursuant to Section XIV (Submissions and Approvals) of this Order.

#### 7.6 The MDEQ's Performance of Response Activities

If Respondents cease to perform the response activities required by this Order; are not performing response activities in accordance with this Order; or are performing response activities in a manner that causes or may cause an endangerment to public health, safety, welfare or the environment, the MDEQ may, at its option and upon providing thirty (30) days prior written notice to Respondents, take over the

performance of those response activities. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines are necessary pursuant to Section XI (Emergency Response) of this Order. If the MDEQ finds it necessary to take over the performance of response activities that Respondents are obligated to perform under this Order, Respondents shall reimburse the State for its costs to perform these response activities, including any accrued interest. Interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this Paragraph shall be considered to be "Future Response Activity Costs" and Respondents shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 15.2, 15.3, and 15.4 of this Order.

### **VIII. COMPLIANCE WITH STATE AND FEDERAL LAWS**

8.1 All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate local ordinances, and state and federal laws, rules, and regulations, including, but not limited to, Part 201 and laws relating to occupational safety and health. Other agencies may also be called upon to review the performance of response activities under this Order.

8.2 This Order does not relieve Respondents' obligation to obtain and maintain compliance with permits including, but not limited to, a National Pollutant Discharge Elimination System (NPDES) permit, Storm Water Management permit and soil erosion and sedimentation control permit.

### **IX. FINANCIAL ASSURANCE AND PAST COSTS**

9.1 Should any of the property owners of the homes at the addresses listed on Attachment 5 of this Order refuse to connect to the municipal drinking water supply within five (5) years of the Effective Date, the Respondents shall put in place a Financial Assurance Mechanism utilizing a certificate of deposit (CD) to assure sufficient funding to connect those properties to the municipal drinking water supply and abandon any on-

site water supply wells located at those properties. The CD, which shall identify MDEQ as the sole beneficiary, shall be established using the form attached to this Order as Attachment 7. The amount of the CD shall be based on a cost estimate from a qualified contractor for an individual connection to the municipal supply and well abandonment multiplied by the number of homes on Attachment 5 that remain unconnected. The cost estimate shall be submitted for review and approval by MDEQ prior to the establishment of the CD. In the event that some or all of the funds in the CD remain after all homes in the Project Area are connected to a municipal drinking water supply or after thirty (30) years from the Effective Date, whichever is earlier, MDEQ may transfer the remaining funds from the CD to the Environmental Response Fund, or its successor.

9.2 Within one hundred and twenty (120) days of the Effective Date of this Order, Respondents shall put in place a CD in the amount of \$100,000. The State may use the funds for either or both of the following purposes: (a) to reimburse the State for Past Response Activity Costs relating to matters covered in this Order; (b) to conduct operation and maintenance activities at the Landfill; or (c) to provide a municipal water supply connection to any home where the private water supply has been impacted by contaminants. It is the understanding of the Parties that the escrowed funds shall not be used for the construction of the new cap. In the event that after thirty (30) years some or all of the funds in the CD have not been used for the purposes set forth in (a), (b) or (c) above, the MDEQ may transfer the remaining funds from the CD to the Environmental Response Fund, or its successor.

## **X. ACCESS**

10.1 Upon the Effective Date of this Order, Respondents shall allow the MDEQ and its authorized employees, agents, representatives, contractors, and consultants to enter the Facility and associated properties at all reasonable times to the extent access to the Facility and any associated properties are owned or controlled by Respondents. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the Facility, MDEQ staff and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Facility and

associated properties, for the purpose of conducting any activity to which access is required for the implementation of this Order, or to otherwise fulfill any responsibility under state or federal laws with respect to the Facility, including, but not limited to, the following:

- (a) Monitoring response activities or any other activities taking place pursuant to this Order at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Assessing the need for, or planning, or conducting, investigations relating to the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting, response activities at or near the Facility;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the response activities;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;
- (h) Determining whether the Facility or other property is being used in a manner that is, or may need to be, prohibited or restricted pursuant to this Order; and
- (i) Assuring the protection of public health, safety, and welfare, and the environment.

10.2 To the extent that property where the response activities are to be performed by Respondents under this Order, is owned or controlled by persons other than Respondents, Respondents agree to use best efforts to secure from such persons written access agreements or judicial orders providing access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Respondents shall provide the MDEQ with a copy of each written access agreement or judicial order secured pursuant to this Section. For purposes of this Paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration for a limited access easement acceptable to the owner or taking judicial action to secure such access. If judicial action is required to obtain access, Respondents shall provide

documentation to the MDEQ that such judicial action has been filed in a court of competent authority no later than three hundred sixty-five (365) days after the Effective Date. If Respondents have not been able to obtain access within sixty (60) days after filing judicial action, Respondents shall promptly notify the MDEQ of the status of its efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of response activities for which the access is needed. Any delay in obtaining access from one property owner shall not be an excuse for delaying the performance of response activities with respect to other property owners who have consented to access, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XII (*Force Majeure*) of this Order.

## **XI. EMERGENCY RESPONSE**

11.1 If an act or the occurrence of an event caused by Respondents' performance of response activities pursuant to this Order causes a release or threat of release of a hazardous substance, or causes exacerbation of existing contamination, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, Respondents shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation; and shall immediately notify the MDEQ Project Manager. In the event of the MDEQ Project Manager's unavailability, Respondents shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Respondents shall be in accordance with all applicable health and safety laws and regulations.

11.2 Within ten (10) days of notifying the MDEQ of such an act or event, Respondents shall submit a written report, setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether Respondents notify the MDEQ under this Section, if such act or event causes a release, threat of release, or exacerbation, the MDEQ may:

(a) require Respondents to stop response activities for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation;

(b) require Respondents to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat of release, or exacerbation; or

(c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVI (Dispute Resolution) of this Order.

## **XII. FORCE MAJEURE**

12.1 Respondents shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a “*Force Majeure*.” Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Order in accordance with this Section.

12.2 For the purposes of this Order, a *Force Majeure* event is defined as any event arising from causes beyond the control of and without the fault of any Respondent, of any person controlled by Respondents, or of Respondents’ contractors that delays or prevents the performance of any obligation under this Order despite Respondents’ “best efforts to fulfill the obligation.” The requirement that Respondents exercise “best efforts to fulfill the obligation” includes Respondents using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that Respondents minimize any delays in the performance of any obligation under this Order to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of any Respondent, such as an act of God, untimely review of permit applications or Submissions by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the diligence of Respondents and that delay the performance of an obligation under this Order. *Force Majeure* does

not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of any Respondent. *Force Majeure* does not include failure to obtain permission to perform response activities from owners, lessees or occupiers of the homes contained in the Project Area, subject to the limitations and requirements of this Order.

12.3 Respondents shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay; the cause or causes of delay; the measures taken by Respondents to prevent or minimize the delay; and the timetable by which those measures shall be implemented. Respondents shall use their best efforts to avoid or minimize any such delay.

12.4 Failure of Respondents to comply with the notice requirements of Paragraph 12.3, above, shall render Section XII (Force Majeure) of this Order, void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 12.3 of this Order.

12.5 If the Parties agree that the delay or anticipated delay was beyond the control of Respondents, this may be so stipulated and the Parties to this Order may agree upon an appropriate modification of this Order. If the Parties to this Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVII (Dispute Resolution) of this Order. The burden of proving that any delay was beyond the control of Respondents, and that all the requirements of this Section have been met by Respondents, is on Respondents.

12.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Respondents qualify for an extension of a subsequent compliance date without providing proof regarding each incremental step or other

requirement for which an extension is sought.

### **XIII. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES**

13.1 Each Party shall designate one or more Project Managers. Respondents shall designate one or more project managers within sixty (60) days of the Effective Date, providing the information requested in Paragraph 13.1(B). Whenever notices, progress reports, information on the collection and analysis of samples, sampling data, work plan submissions, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Order; or whenever other communications between the Parties is needed, such communications shall be directed to the designated Project Manager at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Manager, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable. The Project Manager for each party shall have primary responsibility for overseeing the performance of the response activities and other requirements specified in this Order for Respondents.

For all matters pertaining to this Order:

- A. As to the MDEQ:  
Eric Van Riper, Project Manager  
Lansing District Office  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
525 West Allegan St.  
P.O. Box 30426  
Lansing, MI 48909  
Phone: 517-284-5163  
Fax: 517-241-3571

E-mail Address: VANRIPERE@michigan.gov

- B. As to Respondents:  
**[Name], [Title]**  
**[Address (Street and/or P.O. Box)]**  
**[City], [State] [Zip Code]**  
Phone: **[Phone Number]**  
Fax: **[Fax Number]**

E-mail Address: **[E-mail Address]**

With a copy to:

Sharon R. Newlon, Counsel for Respondents  
Dickinson Wright, PLLC  
500 Woodward Ave., Suite 4000  
Detroit, MI 48226  
Phone: 313-223-3674  
Fax: 313-223-3598  
E-mail Address: [snewlon@dickinsonwright.com](mailto:snewlon@dickinsonwright.com)

13.2 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

#### **XIV. SUBMISSIONS AND APPROVALS**

14.1 All Submissions required by this Order shall comply with all applicable laws and regulations and the requirements of this Order, and shall be delivered to the MDEQ in accordance with the schedule set forth in this Order. All Submissions delivered to the MDEQ pursuant to this Order shall include a reference to the Shiawassee Sanitary Landfill and MDEQ Reference No. AOC-RRD-13-002.

14.2 Within one hundred and fifty (150) days after receipt of the Achievement Report required pursuant to Paragraph 7.4 of this Order, the MDEQ will in writing:

- (a) approve the Achievement Report;
- (b) disapprove the Achievement Report; or
- (c) shall notify Respondents that the Achievement Report does not contain sufficient information for the MDEQ to make a decision. Upon receipt of a notice of approval, Respondents shall submit a new cover page and the Submission marked "Approved".

14.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 14.2(b) of this Order, Respondents shall correct the deficiencies and provide

the revised Submission to the MDEQ for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ's notice of disapproval, Respondents shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period specified for Respondents to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and the MDEQ demands payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties) of this Order. Within one hundred and fifty (150) days of submission, the MDEQ will review the revised Submission in accordance with the procedure set forth in Paragraph 14.2 of this Order. If the MDEQ disapproves a revised Submission, the MDEQ will so advise Respondents and, as set forth above, stipulated penalties shall accrue from the date of the MDEQ's disapproval of the original Submission and continue to accrue until Respondents deliver an approvable Submission.

14.4 If any initial Submission contains significant deficiencies such that the Submission is not in the judgment of the MDEQ a good faith effort by Respondents to deliver an acceptable Submission that complies with Part 201 and this Order, the MDEQ will notify Respondents of such, and will deem Respondents to be in violation of this Order. Stipulated penalties, as set forth in Section XVI (Stipulated Penalties) of this Order, shall begin to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to the MDEQ.

14.5 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Order shall be considered part of this Order and are enforceable pursuant to the terms of this Order. If there is a conflict between the requirements of this Order and any Submission or an attachment to a Submission, the requirements of this Order shall prevail.

14.6 An approval or approval with modifications of a Submission shall not be construed to mean that the MDEQ concurs with all of the conclusions, methods, or

statements in any Submission or warrants that the Submission comports with law.

14.7 Informal advice, guidance, suggestions, or comments by the MDEQ regarding any Submission provided by Respondents shall not be construed as relieving Respondents of their obligation to obtain any formal approval required under this Order.

#### **XV. REIMBURSEMENT OF PAST AND FUTURE RESPONSE ACTIVITY COSTS**

15.1 Respondents shall pay the MDEQ Three Hundred Thousand Dollars (\$300,000.00) to resolve all State claims for Past Response Activity Costs relating to matters covered in this Order.

15.2 Respondents' payment of the first One Hundred Thousand Dollars (\$100,000.00) for Past Response Activity Costs shall be made within thirty (30) days after the Effective Date of this Order. Respondents' payment of the second One Hundred Thousand Dollars (\$100,000.00) for Past Response Activity Costs for Past Response Activity Costs shall be made within one year of the Effective Date of this Order. Respondents' payment of the third One Hundred Thousand Dollars (\$100,000.00) for Past Response Activity Costs shall be made within two years of the Effective Date of this Order. Payment shall be made pursuant to the provisions of Paragraph 15.5 of this Order as of the Effective Date of this Order.

[15.2 Respondents shall pay for response activity costs the State has incurred, but that are not accounted for in Attachment 2 of this Order, including staff costs in negotiating and preparing settlement documents with the Respondents. These costs shall be considered to be Future Response Activity Costs pursuant to Paragraph 15.3 of this Order.]

15.3 Respondents shall reimburse the State for all Future Response Activity Costs incurred by the State. Following the Effective Date of this Order, the MDEQ will periodically provide an invoice for Future Response Activity Costs incurred through the dates specified in the invoice. Any such invoice(s) will set forth, with reasonable

specificity, the nature of the costs incurred and the party(ies) who performed the work that caused the cost(s) to be incurred. Upon receipt of a written request from Respondents, MDEQ shall provide available documentation further supporting any such invoice. Except as provided by Section XVI (Dispute Resolution) of this Order, Respondents shall reimburse the MDEQ for such costs within thirty (30) days of Respondents' receipt of an invoice from the MDEQ.

15.4 Respondents shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Respondents may result in the MDEQ incurring additional Future Response Activity Costs, which will be included in the invoice for payment of Future Response Activity Costs.

15.5 All payments made pursuant to this Paragraph shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent by first class mail to the address listed in this Paragraph. The Shiawassee Sanitary Landfill, the MDEQ Reference No. AOC-RRD-13-002, and the RRD Account Number **[insert number]** shall be designated on each check.

For all payments pursuant to this Paragraph:

MDOT-ASC  
Cashier's Office for MDEQ  
P.O. Box 30657  
Lansing, MI 48909-8157

Via courier:

MDOT-ASC  
Cashier's Office for MDEQ  
Van Wagoner Building, 1st Floor West  
425 W. Ottawa Street  
Lansing, MI 48933

A copy of all correspondence that is sent to the Cashier's Office for MDEQ shall

also be provided to the MDEQ Project Manager designated in Paragraph 13.1A, and the MDAG Assistant in Charge:

Assistant in Charge  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
G. Mennen Williams Building, 6<sup>th</sup> Floor  
525 West Ottawa Street  
Lansing, MI 48933  
Phone: 517-373-7540  
Fax: 517-373-1610

Costs recovered pursuant to this Section and payment of stipulated penalties pursuant to Section XVI (Stipulated Penalties) of this Order shall be deposited into the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

15.6 If Respondents fail to make full payment to the MDEQ for Future Response Activity Costs as specified in Paragraph 15.2 and 15.3 of this Order, interest, at the rate specified in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance on the day after payment was due, until the date upon which Respondents make full payment of those costs and the accrued interest to the MDEQ. In any challenge by Respondents to an MDEQ demand for reimbursement of Future Response Activity Costs, Respondents shall have the burden of establishing that the MDEQ did not lawfully incur those Future Response Activity Costs in accordance with Paragraph 5.5 of this Order or Section 20126a(1)(a) of the NREPA.

## **XVI. STIPULATED PENALTIES**

16.1 Respondents shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 of this Order, for failure to comply with the requirements of this Order, unless excused under Section XI (*Force Majeure*) of this Order. "Failure to Comply" by Respondents shall include failure to complete Submissions and notifications as required by this Order, and failure to perform response activities in accordance with this Order within the specified implementation schedules

established by or approved under this Order. For purposes of this Paragraph 16.1, “Failure to Comply” by Respondents shall not include the following, where Respondents have sought access pursuant to Paragraph 10.2: (a) the refusal of an owner, lessee or occupier of a home listed on Attachment 4 to be connected to the municipal water supply if Respondents are providing an alternate drinking water source, (b) the refusal of an owner, lessee or occupier of any home listed on Attachment 6 to provide access for monitoring pursuant to Paragraph 7.3(b) of this Order if impacts from the Facility have not been detected in analytical data obtained from the private water well, or (c) the refusal of a court to order access following Respondent’s filing of a judicial action pursuant to Paragraph 10.2.

16.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VII (Performance of Response Activities) of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$500.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$1000.00	31 <sup>st</sup> day and beyond

16.3 Except as provided in Paragraph 12.2, and Section XVII (Dispute Resolution) of this Order, if Respondents fail or refuse to comply with any other term or condition of this Order, Respondents shall pay the MDEQ stipulated penalties of One Hundred Dollars (\$100.00) per day for each and every failure or refusal to comply.

16.4 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

16.5 Except as provided in Section XVII (Dispute Resolution) of this Order,

Respondents shall pay stipulated penalties owed to the State no later than thirty (30) days after Respondents' receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 15.3 of this Order. Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the thirty (30)-day period, on the day after payment was due until the date upon which Respondents make full payment of those stipulated penalties and the accrued interest to the MDEQ.

16.6 The payment of stipulated penalties shall not alter in any way Respondents' obligation to perform the response activities required by this Order.

16.7 If Respondents fail to pay stipulated penalties when due, the State may institute proceedings to collect the penalties, as well as any accrued interest. However, the assessment of stipulated penalties is not the State's exclusive remedy if Respondents violate this Order. For any failure or refusal of Respondents to comply with the requirements of this Order, the State reserves the right alternately to pursue any other remedies to which it is entitled under this Order or any applicable law including, but not limited to, seeking civil fines, injunctive relief, and the specific performance of response activities and reimbursement of costs.

16.8 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Order.

## **XVII. DISPUTE RESOLUTION**

17.1 Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order, including review and approval of an Achievement Report, except for Section XI (Emergency Response) of this Order, which is not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Respondents' obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to

this Section shall not be cause for Respondents to delay the performance of any response activity required under this Order.

17.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Respondents provide to the State under Paragraphs 17.3 through 17.5 of this Order, and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 17.3 through 17.5 of this Order.

17.3 Except for undisputable matters identified in Paragraph 17.1 of this Order, any dispute that arises under this Order with respect to the MDEQ's disapproval, modification, or other decision concerning requirements of this Order, shall in the first instance, be the subject of informal negotiations between the district staff representing the MDEQ and Respondents. A dispute shall be considered to have arisen on the date that a Party to this Order receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event, Respondents object to any MDEQ notice of disapproval, modification, or decision concerning the requirements of this Order that is subject to dispute under this Section, Respondents shall submit the Notice of Dispute within ten (10) days of receipt of the MDEQ's notice of disapproval, modification, or decision. The period of informal negotiations shall not exceed twenty (20) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within twenty (20) days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Position, in writing, to Respondents. In the absence of initiation of formal dispute resolution by Respondents under Paragraph 17.4 of this Order, the MDEQ's position as set forth in the MDEQ's Statement of Position shall be binding on the Parties.

17.4 If Respondents and the MDEQ cannot informally resolve a dispute under

Paragraph 17.3 of this Order, Respondents may initiate formal dispute resolution by submitting a written Request for Review to the RRD Chief, with a copy to the MDEQ Project Manager, requesting a review of the disputed issues. This Request for Review must be submitted within ten (10) days of Respondents' receipt of the Statement of Position issued by the MDEQ pursuant to Paragraph 17.3 of this Order. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Within twenty (20) days of the RRD Chief's receipt of Respondents' Request for Review, the RRD Chief will provide the MDEQ's Statement of Decision, in writing, to Respondents, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Statement of Decision shall be binding on the Parties.

17.5 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Respondents' failure or refusal to comply with any term or condition of this Order, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that Respondents do not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Respondents shall pay stipulated penalties as set forth in Paragraph 16.5 of Section XVI (Stipulated Penalties) of this Order. Respondents shall not be assessed stipulated penalties for disputes that are resolved in their favor. The MDAG, on behalf of the MDEQ, may take civil enforcement action against Respondents to seek the assessment of civil penalties or damages, pursuant to Section 20137(1) of the NREPA, or other statutory and equitable authorities.

17.6 Notwithstanding the provisions of this Section and in accordance with Section XV (Reimbursement of Costs) and Section XVI (Stipulated Penalties) of this Order, Respondents shall pay to the MDEQ that portion of the invoice for

reimbursement of costs or demand for payment of stipulated penalties that is not the subject of an ongoing dispute resolution proceeding.

17.7 As provided for in Section 20137(4) of the NREPA, no action or decision of the MDEQ or the MDAG shall constitute a final agency action giving rise to any rights of judicial review prior to the MDAG's initiation of judicial action to compel Respondents to comply with this Order or to enforce a term, condition, or other action required by this Order. Nothing in this Order shall expand Respondents' ability to obtain pre-enforcement review of this Order.

### **XVIII. INDEMNIFICATION AND INSURANCE**

18.1 The State of Michigan does not assume any liability by entering into this Order. This Order shall not be construed to be an indemnity by the State for the benefit of Respondents or any other person.

18.2 Respondents shall indemnify and hold harmless the State and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of Respondents, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Order.

18.3 Respondents shall indemnify and hold harmless the State and its departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Respondents and any person for the performance of response activities, including any claims on account of construction delays.

18.4 The State shall provide Respondents notice of any claim for which the State intends to seek indemnification pursuant to Paragraphs 18.2 or 18.3 of this Order.

18.5 Neither the State nor any of its departments, agencies, officials, agents,

employees, contractors, or representatives shall be held out as a party to any contract that is entered into by or on behalf of Respondents for the performance of activities required by this Order. Neither Respondents nor their contractor shall be considered an agent of the State.

18.6 Respondents waive all claims or causes of action against the State and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement between Respondents and any other person for the performance of response activities, including any claims on account of construction delays.

18.7 Prior to commencing any response activities pursuant to this Order, and for the duration of this Order, Respondents shall secure and maintain comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000.00) of combined single limit, which names the MDEQ, the MDAG, and the State of Michigan as additional insured parties. If Respondents demonstrate by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then, with respect to that contractor or subcontractor, Respondents need to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Respondents and prior to commencement of response activities pursuant to this Order, Respondents shall provide the MDEQ Project Manager and the MDAG with certificates evidencing said insurance and the MDEQ, the MDAG, and the State of Michigan's status as additional insured parties. Such certificates shall specify the Shiawassee Sanitary Landfill, the MDEQ Reference No. AOC-RRD-13-002 and the Remediation and Redevelopment Division.

#### **XIX. COVENANTS NOT TO SUE BY THE STATE**

19.1 In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as specifically provided for in this Section and Section XX (Reservation of Rights by the

State) of this Order, the State of Michigan hereby covenants not to sue or to take further administrative action against Respondents for:

- (a) Response activities related to the release of hazardous substances at the Facility, and
- (b) Recovery of Past and Future Response Activity Costs associated with the Facility.

19.2 The covenants not to sue shall take effect under this Order as follows:

- (a) With respect to Respondents' liability for response activities performed related to the release of hazardous substances at the Facility, the covenant not to sue shall take effect upon approval of the Achievement Report pursuant to Paragraph 7.4 of this Order, and
- (b) With respect to Respondents' liability for Past Response Activity Costs and Future Response Activity Costs incurred and paid by the State, the covenants not to sue shall take effect upon the MDEQ's receipt of payments for those costs, including any applicable interest that has accrued pursuant to this Order.

19.3 The covenants not to sue extend only to the Respondents and do not extend to any other person.

## **XX. RESERVATION OF RIGHTS BY THE STATE**

20.1 The covenants not to sue apply only to those matters specified in Paragraph 19.1 of this Order. The State expressly reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Respondents with respect to the following:

- (a) The performance of response activities that are specified in Paragraph 7.1 and 7.3 of this Order.
- (b) Response activity costs required by this Order that Respondents have not paid.
- (c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that

are not attributable to the Facility.

(d) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility.

(e) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.

(f) Criminal acts.

(g) Any matters for which the State is owed indemnification under Section XVII (Indemnification and Insurance) of this Order.

(h) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Order or any other violations of state or federal law for which Respondents have not received a covenant not to sue.

20.2 The State reserves the right to take action against Respondents if it discovers at any time that any material information provided by Respondents prior to or after entry of this Order was false or misleading.

20.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Order.

20.4 In addition to, and not as a limitation of any other provision of this Order, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary.

20.5 In addition to, and not as a limitation of any provision of this Order, the MDEQ and the MDAG retain all of their information-gathering, inspection, access, and enforcement authorities and rights under Part 201, and any other applicable statute or regulation.

20.6 Failure by the MDEQ or the MDAG to enforce any term, condition, or

requirement of this Order in a timely manner shall not:

(a) Provide or be construed to provide a defense for Respondents' noncompliance with any such term, condition, or requirement of this Order.

(b) Estop or limit the authority of the MDEQ or the MDAG to enforce any such term, condition, or requirement of the Order, or to seek any other remedy provided by law.

20.7 This Order does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Respondents as required by this Order will result in the achievement of the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

20.8 Except as provided in Paragraph 19.1 of this Order, nothing in this Order shall limit the power and authority of the MDEQ or the State, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

#### **XXI. COVENANT NOT TO SUE BY RESPONDENTS**

21.1 Respondents hereby covenant not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA, or any other provision of law.

21.2 After the Effective Date of this Order, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Respondents agree not to assert

and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting; or that are based upon a defense that contends any claims raised by the MDEQ or the MDAG in such a proceeding were or should have been brought in this case, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII (Covenants Not to Sue by the State) of this Order.

## **XXII. CONTRIBUTION**

Pursuant to Section 20129(5) of the NREPA, and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to the extent provided in Section XX (Covenants Not to Sue by the State) of this Order, Respondents shall not be liable for claims for contribution for the matters set forth in Paragraph 19.1 of this Order, to the extent allowable by law. The Parties agree that entry of this Order constitutes an administratively approved settlement for purposes of Section 113(f)(3)(B) of the CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the MDEQ for the matters set forth in Paragraph 19.1 of this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 9607 and 9613 of the CERCLA. Pursuant to Section 20129(9) of the NREPA, any action by Respondents for contribution from any person that is not a Party to this Order shall be subordinate to the rights of the State of Michigan, if the State files an action pursuant to the NREPA or other applicable state or federal law.

## **XXIII. MODIFICATIONS**

23.1 The Parties may only modify this Order according to the terms of this Section. The modification of any Submission or schedule required by this Order may be made only upon written approval from the MDEQ.

23.2 Modification of any other provision of this Order shall be made only by written agreement between Respondents' Project Manager, the RRD Chief, or his or her authorized representative, and the designated representative of the MDAG.

**XXIV. SEPARATE DOCUMENTS**

The Parties may execute this Order in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

**XXV. SEVERABILITY**

The provisions of this Order shall be severable. If a court of competent authority declares that any provision of this Order is inconsistent with state or federal law and therefore unenforceable, the remaining provisions of this Order shall remain in full force and effect.

IT IS SO AGREED TO AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

---

Robert Wagner, Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

---

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

---

Richard Kuhl (*P42042*)  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

---

Date

IT IS SO AGREED BY:

Johnson Controls, Inc.

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

IT IS SO AGREED BY:

Wolverine Sign Works

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Maurer Heating and Cooling Co.

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Consumers Energy Company

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Ford Motor Company

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

IT IS SO AGREED BY:

Owosso Public Schools

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

City of Owosso

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Shiawassee County Road Commission

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

Shiawassee County Courthouse

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

The Argus-Press Company

---

***[Name and Title of PLP's  
Authorized Representative]***

---

Date

MDEQ Reference No. AOC-RRD-13-002

IT IS SO AGREED BY:

ConAgra Foods, Inc.

---

***[Name and Title of PLP's  
Authorized Representative]***  
DETROIT 39491-1 1345087v3

---

Date

## **ATTACHMENT 1**

### **Property Description**

Lot(s) 50 and 51, SUPERVISOR'S PLAT OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 7 NORTH, RANGE 2 EAST, according to the recorded plat thereof, as recorded in Liber 11 of Plats, Page 193.

AND ALSO:

Lot 1 and Lots 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of ROBY'S SUBDIVISION OF LOT 49 OF SUPERVISOR'S PLAT OF BOCK'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWN 7 NORTH, RANGE 2 EAST, according to the recorded plat thereof, as recorded in Liber 12 of Plats, page 205.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
 REMEDIATION AND REDEVELOPMENT DIVISION

Date: 04/29/2015

Source: ERNIE

Cost Recovery Summary Report - Combined

Page: 1 of 1

Site Name: Shiawassee Sanitary Landfill

County: Shiawassee

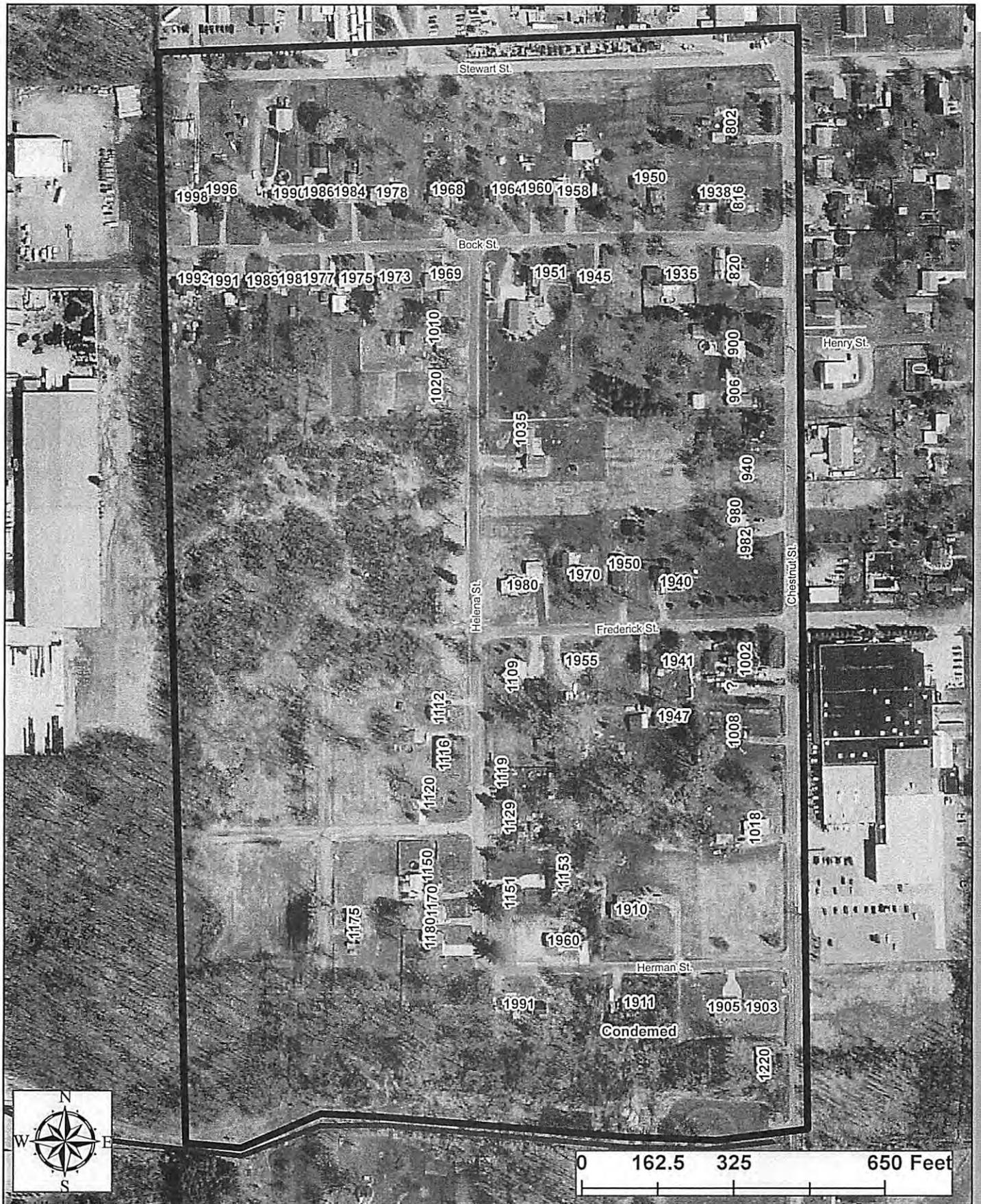
Site ID: 78000071

Packages: 455660-00

Shiawassee Sanitary Landfill: Original, Update 1, update 2, update 3, update 4

Total for Employee Salaries and Wages		
Period Covered: 04/01/2001 - 04/11/2015	\$273,386.38	
Indirect Dollars	\$41,321.19	
Sub-Total		<u>\$314,707.57</u>
Total for Employee Travel Expenses		
Period Covered: 04/29/2001 - 02/14/2015		\$5,932.31
Contractual Expenses		
AECOM (Earth Tech) (State) (P1001485 )		
Period Covered: 10/01/2000 - 01/31/2003	\$199,246.00	
Malcolm Pirnie, Inc. (LOE #2005) (P5201009 )		
Period Covered: 02/26/2005 - 02/08/2008	\$199,993.55	
Trace Analytical Laboratories, Inc. (Y03088 )		
Period Covered: 08/04/2006 - 01/11/2007	\$2,875.00	
Malcolm Pirnie, Inc. (LOE 2005-2009) (P8200311 )		
Period Covered: 11/24/2007 - 07/28/2009	\$114,114.07	
Trace Analytical Laboratories, Inc. (Y08044 )		
Period Covered: 08/22/2008 - 08/25/2008	\$3,233.40	
Contract Sub-Total		<u>\$519,462.02</u>
Total for Miscellaneous Expenses		
Period Covered: 03/18/2005 - 08/24/2007		\$1,644.15
MDNR/MDEQ Lab		
Period Covered: 02/22/2002 - 10/31/2008		\$195,225.20
Total for MDPH/Community Health Expenses		
Alternate Water Supply		
Period Covered:	\$0.00	
Bottled Water		
Period Covered:	\$0.00	
MDPH/MDCH Lab		
Period Covered:	\$0.00	
Sub-Total		<u>\$0.00</u>
Attorney General Expenses		
Period Covered: 01/31/2014 - 03/31/2015		\$8,668.75
Other Expenses		
Period Covered:		\$0.00
Sub-Total		<u>\$1,045,640.00</u>
Interest Calculated from through		<u>\$0.00</u>
Total Combined Expenses for Site and Interest		<u><u>\$1,045,640.00</u></u>
Run Date 06/23/2011		

# Attachment 3 - Project Area Section 23 Owosso Township, Michigan



**—** Municipal Water Extension Project Area

**ATTACHMENT 4**

**List of Homes with Drinking Water Criteria Exceedences:**

1010 Helena

**ATTACHMENT 5**

**List of Homes with Detections Alleged to Originate from the Landfill:**

1975 Bock

1977 Bock

1989 Bock

1993 Bock

1175 Etta

1950 Frederick

1955 Frederick

1970 Frederick

1980 Frederick

1010 Helena

1020 Helena

1035 Helena

1109 Helena

1112 Helena

1116 Helena

1119 Helena

1180 Helena

## **ATTACHMENT 5**

### **List of Homes with Detections Alleged to Originate from the Landfill:**

1975 Bock

1977 Bock

1989 Bock

1993 Bock

1175 Etta

1950 Frederick

1955 Frederick

1970 Frederick

1980 Frederick

1010 Helena

1020 Helena

1035 Helena

1109 Helena

1112 Helena

1116 Helena

1119 Helena

1180 Helena

## ATTACHMENT 6

### List of Homes Subject to Drinking Water Monitoring Requirements:

1945 Bock	1150 Helena
1951 Bock	1151 Helena
1969 Bock	1170 Helena
1973 Bock	1180 Helena
1975 Bock	
1977 Bock	
1987 Bock	
1989 Bock	
1991 Bock	
1993 Bock	
1998 Bock	
1175 Etta	
1940 Frederick	
1950 Frederick	
1955 Frederick	
1970 Frederick	
1980 Frederick	
1010 Helena	
1020 Helena	
1035 Helena	
1109 Helena	
1112 Helena	
1116 Helena	
1119 Helena	
1120 Helena	
1129 Helena	

RESOLUTION NO.

AUTHORIZING THE EXECUTION OF A CONTRACT WITH JACK DOHENY  
COMPANIES FOR A VACTOR MANUFACTURING MODEL 2115 COMBINATION  
SEWER CLEANER

WHEREAS, the City of Owosso, Shiawassee County, Michigan, maintains an extensive sanitary and storm sewer systems which require ongoing cleaning and maintenance; and

WHEREAS, the City of Owosso is a member and participant in the National Intergovernmental Purchasing Alliance, a group purchasing alliance which secured a competitive bid and awarded a contract (RFP-RH-10-078).

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to purchase a Vactor Manufacturing Model 2115 combination sewer cleaner in the amount of \$\_\_\_\_\_.00.

SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached, Contract for Services between the City of Owosso, Michigan and Jack Doheny Companies up to the amount of \$\_\_\_\_\_.00.

THIRD: The above expenses shall be paid from the 2014/15 Fleet Maintenance Fund 661-000-695.699.

FOURTH: The 2014-15 Fleet Maintenance Fund Budget be amended to include the monies needed to complete this purchase.

More information forthcoming.



## MEMORANDUM

---

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

---

DATE: May 4, 2015

TO: Owosso City Council

FROM: Mark Sedlak, Director of Public Service Department

SUBJECT: Application for Transportation Economic Development Funds, Category F, for the pavement rehabilitation of S. Washington Street from Gute Street to M-71 (Corunna Avenue).

### RECOMMENDATION:

I recommend that Council approve the attached resolution supporting the proposed pavement rehabilitation of S. Washington Street from Gute Street to Corunna Avenue as the first step in seeking Transportation Economic Development, Category F funds (TEDF-F) for the project.

### BACKGROUND:

The Michigan Department of Transportation has announced its call for applications for Transportation Economic Development, Category F funds (TEDF-F) for proposed roadway improvements that will provide system continuity with secondary all-season commercial routes in federal aid small urbanized boundaries, including the City of Owosso. Candidate streets must meet certain criteria to become eligible for this category of funding and then entered into a state-wide competition for selection. The City recently was awarded a project under this process and Washington Street is the City's next most eligible street. The City proposes to make necessary repairs to the pavement of Washington Street from Gute Street to M-71. Work scope is to replace and increase the pavement section between Stewart and M-71; and do a structural overlay between Gute and Stewart Streets. The work is scheduled for the 2017 construction season because MDOT requires advance submittal of applications for TEDF-F funded projects. This work will improve traffic flow for vehicular traffic and provide system continuity for the city's secondary all-season commercial truck route system.

### FISCAL IMPACTS:

The total estimated cost for this project is \$547,400.00 of which TEDF-F funds, if approved by MDOT, will pay \$375,000.00. The City's share will be \$172,400.00 and funded by its Unlimited Tax General Obligation Bond proceeds. The City will be responsible for providing full design engineering and construction administration services for the project. Approval of the attached resolution will indicate Council's support for the project and the funding required of the City. MDOT requires the submission of such a resolution prior to consideration of any application for funds.

If MDOT does not approve the project and/or the necessary TEDF-F funds, then it will be delayed until sufficient funds become available.

This resolution is originated by: Director of Public Service.

**RESOLUTION NO. \_\_\_\_**

**RESOLUTION AUTHORIZING APPLICATION FOR  
TRANSPORTATION ECONOMIC  
DEVELOPMENT FUNDS, CATEGORY F  
FOR S. WASHINGTON STREET IMPROVEMENTS**

WHEREAS, the City of Owosso, Shiawassee County, Michigan, Public Service Department recommends pavement rehabilitation of Washington Street from Gute Street to Corunna Avenue (M-71); and

WHEREAS, the Michigan Department of Transportation offers special funding known as Transportation Economic Development Fund-Category F (TEDF-F) for roadway improvements that provide continuity with the secondary all-season commercial truck route system; and

WHEREAS, the roadway proposed for improvement meets all of the requirements of the TEDF Program; and

WHEREAS, the City of Owosso proposes to procure TEDF-F funds for the purpose of providing a 68.5 percent (68.5%) state match to the City's Unlimited Tax General Obligation Bond Proceeds as outlined in its application.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County Michigan that:

- FIRST: The City of Owosso has theretofore determined that it is advisable, necessary and in the public interest to proceed with the proposed roadway improvements.
- SECOND: That the City of Owosso is actively seeking TEDF-F funds to partially fund the pavement rehabilitation of Washington Street from Gute Street to Corunna Avenue (M-71) and is willing to participate in this program.
- THIRD: That the proper city officials are authorized to sign the application documents.
- FOURTH: Staff is hereby authorized to obligate City funds as its match of the project cost.

**From:** Tim Alderman [mailto:tralderman@yahoo.com]

**Sent:** Wednesday, April 29, 2015 6:57 PM

**To:** Amy K. Kirkland

**Cc:** Mike Espich

**Subject:** Alderman - P & R Resignation

**Ms. Kirkland,**

Please accept this email as my formal letter of resignation from the Owosso Parks and Recreation committee effective immediately. I have enjoyed serving but can no longer do so effectively due to conflicts with my schedule.

**Best regards,**

**Tim Alderman**

**MINUTES  
REGULAR MEETING OF THE OWOSSO PLANNING COMMISSION  
Council Chambers, City Hall  
April 27, 2015 – 7:00 pm**

Quorum was not met, but in attendance were Chairman Wascher, Commissioners Bandkau, Smith and Weaver.

Also in attendance was Ms. Susan Montenegro, Assistant City Manager and Director of Community Development; Mr. Gregg Jones from Tial Products, 450 S. Shiawassee Street; and Mr. Justin Horvath, Director of the Shiawassee Economic Development Partnership.

mms

**Minutes**  
**Regular Meeting of the Parks & Recreation Commission**  
**Council Chambers / City Hall**  
**March 23, 2015 – 6 p.m.**

- Call to order:** The meeting was called to order at 6:04 p.m. by Chairman Espich.
- Pledge of Allegiance:** The Pledge of Allegiance was recited by all in attendance.
- Roll Call:** Roll call was taken by Recording Secretary Marty Stinson.
- Members Present:** Chairman Michael Espich; Vice-Chairman Jeff Selbig; Commissioner Shane Nelson.
- Members Absent:** Commissioner Tim Alderman and Kristen Woodbury.
- Others Present:** Ms. Susan Montenegro, Assistant City Manager and Director of Community Development.

**Approve Agenda for March 23, 2015:**

**A motion to approve the agenda for meeting of March 23, 2015, was made by Commissioner Nelson, and supported by Commissioner Selbig.**

**Ayes: all. Motion carried.**

**Approve Minutes for February 23, 2015 meeting:**

**A motion to approve the minutes of February 23, 2015 was made by Commissioner Nelson, and supported by Commissioner Selbig.**

**Ayes all. Motion carried.**

**Public Comments:** None

**Communications:**

1. Staff memorandum
2. February 23, 2015 minutes

**Business:**

**1. Daniel Vargas – Sign for Bike Rack at Bentley Park**

Chairman Espich said that Mr. Vargas expected to have the sign done by the end of this week, and then Mr. Vargas will weld it onto the bike rack.

**2. Greenup / Cleanup**

Ms Susan Montenegro, Assistant City Manager and Director of Community Development stated that the Greenup / Cleanup is under the direction of Main Street. The exact date hasn't been decided yet.

**3. Skate Park Renovation – Ideas, Need to Involve Public (Youth Who use the Skate Park)**

Ms. Montenegro presented a video showing how the ramps for skate parks are manufactured in a factory and then installed on site. She noted we need to start looking at more fundraising. Need to get the kids involved for designing the park. The cement and rebar for replacing the current size would cost about

\$5,000 and to double the size, \$10,000. Chairman Espich said the kids love the downtown fixtures and suggested putting in things like that. It was suggested that the Skate Park be moved to a safer area with good sidewalks; possibly where the fire truck was going at S. Water and S. Washington. Discussion about going to the schools to invite students to discuss what they would like to see in a skate park.

**Motion by Commissioner Selbig, supported by Commissioner Nelson to devote the next Parks and Recreation meeting solely to information gathering for the Skate Park.**

**Ayes all. Motion carried.**

Commissioner Selbig suggested that what we're planning now could completely change based on the next meeting. Chairman Espich will make mention of the next meeting with the kids on the Facebook page.

**Discussion:**

**1. Plunge – Planning for next year**

Ms. Montenegro asked do we want to do it again next year. We raised a lot of money this year. We're open to other avenues of fundraisers. It was totally worth it for the money we raised. She would like to see us do it again next year. She suggested a 5k or a bike race through the city or through the parks with a pay to run event. It could be combined as a walk, run, or ride for parks. Almost all of the money is collected from the plunge.

## 2015 PLUNGER TALLY

Follows on next page

**2. Disc golf – Mr. Greg Jones who owns the property that has been in question regarding people going over it in playing disc golf is not comfortable with the possible liability. He would rather sell the property to the city. Discussion about possibly moving the route.**

**Public / Board Comments:** None

**Adjournment:**

**A motion to adjourn the meeting was made by Commissioner Selbig, and was supported by Commissioner Nelson. The meeting adjourned at 6:52 p.m.**

**Ayes: all. Motion carried.**

---

Susan Montenegro, Secretary

mms

	<b>Plungers</b>	<b>Pledge</b>
1	Ben Frederick	
2	Rick Morris	\$ 478.00
3	Sue Montenegro	\$ 682.00
4	Ned DeGalan	
5	Gary Burk	\$ 500.00
6	Josh Adams	\$ 305.00
7	Brad Kirkland	
8	Jeff Deason	\$ 163.00
9	Teresa Graham	\$ 603.31
10	Anthony Karhoff	\$ 100.00
11	Melvin Renfrow	\$ 90.00
12	Aaron Maike	\$ 447.79
13	Rick Jones	\$ 100.00
14	John Beebe	
15	Eric Sanderson	
16	Amanda Freeland	\$ 25.00
17	Sean Grey	\$ 72.71
18	Barbara BakerOmerod	\$ 887.00
19	Jody Lindell	\$ 715.00
20	Casey Lambert	\$ 40.00
21	Jim Hathaway	\$ 490.00
22	Tashia Walker	
	anonymous donor	\$ 2,000.00
	anonymous donor CAC	\$ 200.00
	hot chocolate donations	\$ 15.83
	50/50	\$ 326.00
	LAFCU	\$ 1,500.00
	Iron Wheels	\$ 2,500.00
	WIG	\$ 100.00
	online - no designation	\$ 40.00
	<b>Total Raised</b>	<b>\$ 12,380.64</b>
	PayPal through city website	\$ 295.00
	Total Deposited to date	\$ 11,566.39
	Total Monies Received to date	\$ 11,861.39
	<b>Amount Outstanding to date</b>	<b>\$ 519.25</b>

# Owosso Historical Commission

## Regular Meeting Notice Monday, April 13, 2015, 7:00PM Gould House

### Minutes

- Call to order:** Meeting was called to order at 7:00PM
- Present:** Elaine Greenway, Chair; Jennifer Mahoney, Vice Chair; Robert Brockway; Dennis Mahoney; Adrian Montague; Robert Doran, Director
- Absent:** Nicholas Pidek
- Guests:** Tracy Peltier & Dean Ebert
- Approval of Agenda:** Dennis Mahoney moved to accept the agenda. Robert Brockway supported. Motion passed unanimously.
- Treasurer's Report:** Dennis Mahoney moved to accept the Treasurer's Report. Jennifer Mahoney supported. Motion passed unanimously. Commission was briefed on the "endowment fund" and whether it is a true endowment. It is unclear because of lack of documentation.
- Approval of March March minutes:** Dennis Mahoney motioned to approve the March minutes. Robert Brockway supported. All supported.
- Citizen Comments:** No comments.
- Communications:** Charlie & Arlene Wascher from the Owosso Historical Society came to the Gould House with a packet full of archival architectural plans for Memorial Hospital and several other Owosso buildings. They thought the Owosso Historic Commission would make good use of the gift. Robert will follow up with a thank you card.
- Directors Report:**
- Robert has been attempting to change the Owosso Historic Commission budget structure. Additions to budget line items include but not limited to: marketing/branding, social media/promotion, exhibitions, grants, education curriculum, and rent/special events. The financial structure additions would support a better infrastructure & efficiency when looking over the overall budget. Currently, all of the above is listed in a misc bucket & makes things very difficult.
- Robert Doran briefed us on the new contracts, policies & procedures for Castle/Gould House events, concerts, functions, weddings, etc. He stated it now needs to go to the city attorney and city manager for guidance and approval.
- Robert Doran suggested for the OHC to revisit the charter & bylaws since they have not been significantly reviewed since 2003. He said there would be a special meeting scheduled to address this topic.
- Robert Doran announced that the stumps on the north lawn of Gould House had been removed, the holes filled and grass had been planted.
- Robert Doran announced that we are now officially members of the Cook Family Foundation Non-Profit Capacity Building Initiative.
- Robert Doran announced that the following non-profit historical entities in Shiawassee County have agreed to meet the last Wednesday of every month to discuss ideas and the possible sharing of resources and future collaborations. These are The Shiawassee Historical Society, The Steam Railroading Institute, Corunna Historical Village, Durand Union Station Michigan Railroad History Museum, Main Street and the Owosso Historical Society. We have already met two times, first at

Gould House, and then at Durand Union Station. The second meeting was attended by Kim Springsdorf of the Shiawassee County Visitors Bureau. Piper Brewer from the Shiawassee Arts Center will attend the next meeting, which will be held on Wednesday, April 29 at the Shiawassee Historical Society. In the last meeting we agreed to work on a post card that has some basic branding for the Shiawassee Historical entities and social media information.

Robert Doran shared that the Curwood Festival is quickly arriving that that the entire Commission will need to volunteer to keep all the historical buildings open during the entire event – June 4, 5, 6 & 7. He also shared a new volunteer manual he is creating & the leave behind flier to get involved with the OHC. Adrian Montague suggested a different title than the one listed on the flier. Current title is "Want to help you community but not sure how? You can Volunteer for the Owosso Historical Commission". She thought that there should be an emotional connection to volunteering & suggested language that would make Owosso residents feel like they belong to something greater. Robert Doran asked the commission to suggest a new title ASAP. Tracy, Dean, Adrian, and Elaine agreed we should explore the possibility of changing the wording of the title of the flier.

Robert Doran described in detail his and Denice Grace's amazing visit to the Henry Ford Museum and Greenfield Village at the invitation of Jeanine Head-Miller, The Curator of Everyday Life. will visit Owosso on Wednesday, May 27<sup>th</sup> for the entire day. At 3pm she will be speaking at the monthly Shiawassee County nonprofit historical director/manager meetings Robert has initiated. Robert will be showing her all of the historical properties Owosso has to offer, the OHC exhibit setup, The Ivan Conger Archive Room, and the rest of Shiawassee County's historical assets. Robert has encouraged all on the OHC to make time to meet her that day.

Robert Doran updated the OHC that 2 interns from Baker College will be starting in June. They will be involved with marketing, archiving, and the display of the historical exhibitions.

Growing Up Historically – Adrian Montague moved to make a motion to have Growing Up Historically Fund Raiser for the Owosso Historical Commission at Elaine Greenway's house on August 15<sup>th</sup> with food, alcohol, and music. Jennifer Mahoney supported. Motion passed unanimously.

Michael Boudro, the archivist from Durand Union Station, donated 12 hours to jump starting our Past Perfect archiving process instead of charging us. OHC is extremely grateful for the volunteer hours & his generosity. Robert Doran will send a thank you note next week on behalf of the OHC.

Robert Doran spoke briefly about Charlie & Arlene's framed posters of Curwood Castle. He suggested that the OHC could borrow the posters, create a joint collaboration, and share profits/cross promotion of community events that showcase their posters.

**Robert Doran asked for \$500 at his disposal for marketing, promotional material, posters, postcards, etc. for the rest of the year. Robert Brockway motioned to approve his request. Jennifer Mahoney supported. Motion passed unanimously.**

**Robert Doran asked for \$250 for panels, display repairs, lights, etc. for the historical exhibitions. Jennifer Mahoney motioned to grant Robert \$300 for the exhibition needs. Robert Doran also stated there will be long term, residual benefits from this investment. Robert Brockway supported. Motion passed unanimously.**

Robert Doran showed the Commission members a packet of mostly outdated marketing materials that he indicated we need to work on. Doran will come back with first passes of new materials during subsequent meetings.

Robert Doran discussed the 2015 Home tour, and indicated that he, Elaine Greenway and Jennifer Mahoney had a final list of homes for the tour.

Jennifer Mahoney brought up Robert Doran's broken cell phone & raised the question as to whether the commission should partially cover his cell phone bill. Robert Doran stated that 70% of his use on his cell phone is OHC related. The OHC did not come to a conclusion during that discussion. Elaine Greenway was hesitant to use OHC funds for Robert Doran's phone bill. **Dennis Mahoney moved to make a motion to have Robert repair his phone and having the OHC pay of the repair. Jennifer Mahoney supported.** Dennis Mahoney moved to make a motion to have Robert's cell phone bill on

the next OHC meeting's agenda to look into the possibility of paying for part of Robert's monthly bill because of the use of OHC business on his personal phone.

Robert Doran will move forward with alarming Gould House and fixing cameras and adding a DVR to the Curwood Castle security system. This initiative was approved at the November 2014 Owosso Historical Commission meeting.

Robert Doran announced the resignation of Erin Powell from Owosso Historical Commission and Lois Whalen as Curwood Castle Docent.

Robert Doran announced that he will attempt to attend all the upcoming monthly MMA Workshops at \$50 per workshop.

### Old Business:

Robert Doran put forth following schedule for OHC:

High School Honors Volunteer Orientation – Jennifer Mahoney requested to change the April 19<sup>th</sup> meeting to April 26<sup>th</sup>. Meeting changed to April 26<sup>th</sup>. She also stated this meeting would be only for students, no adults.

April 25<sup>th</sup> – Curwood Festival Clean Up – Robert Doran will be volunteering time to clean up around Curwood Castle from 10am-12pm that day. He encouraged the rest of the commissioners on the OHC to also volunteer time on April 25<sup>th</sup>, if their schedule allows. Robert Doran also mentioned that he would like to purchase OHC crew shirts at some point in the near future.

May 16<sup>th</sup> – Prince & Princess Party (Saturday) – Jennifer Mahoney explained what the party will entail & who would be encouraged to participate. The children (kindergarten & 1<sup>st</sup> grade) will be doing crafts (building crowns & wands), snacks will be provided, and there will be an opportunity to meet a prince & princess. Tickets will be \$15 a child & by reservation only. Robert Doran will send out a press release. Adrian Montague suggested that the OHC should look into photo releases for parents to sign if we plan to post pictures of event on social media because kids are under the age of 18.

June 4, 5, 6 and 7 – Curwood Castle Festival – Elaine Greenway stated she will be unable to attend that Friday. Robert Doran would like everyone at the parade. Robert Doran also stressed the importance of having a lot of volunteers & docents. Robert Doran stated that he is in the process of making the commission a board-like structure & that boards are responsible for bringing volunteers to events.

Branding & logo updates – Burning Media Group – has been chosen to develop and launch the new OHC website as well as our new branding/logo, with an end of June delivery date. Robert Doran stated that if we have everything in place by August that he will be happy. **Dennis Mahoney moved to make a motion to pay half (\$2,500) of the fee to Burning Media Group now for the website and the other half (\$2500) upon completion of the project. Robert Brockway supported. Motion passed unanimously. Jennifer Mahoney moved to make a motion to pay Burning Media Group for their logo design. She stated that we should pay Burning Media Group half (\$500) up front and the other half (\$500) upon completion. Robert Brockway supported. Motion passed unanimously.**

Kettering University intern idea scrapped for the time being. The OHC wants a full engineering survey done on all of the historical properties. This discussion was tabled for the time being.

### New Business:

**Robert Doran asked for \$600 dollars to use toward the purchase of museum cases for OHC's ongoing historical exhibitions initiative. Jennifer Mahoney motioned to allocate the \$600 for the museum cases. Robert Brockway supported. Motion passed unanimously.**

Acquisitions Committee and Budget – Robert Doran suggested we look into an acquisition budget.

The OHC discussed pictures at the castle/historical properties. Robert Doran suggested we charge for anyone who wants to use the Castle for indoor photos due to the resources, time and energy put into these events. Robert suggested we put forth Michael Paine as our "official" photographer. Adrian

Montague suggested we charge \$50 to the individual and they can also bring in their desired photographer to take pictures or if they go with Mike, they could have a potential discount. This was tabled for the time being.

Gould House and Curwood Castle Gardens – Dennis Mahoney to contact MSU extension to take back the historical gardens. Robert Doran to contact Owosso Garden Club for possible involvement.

Citizen Comments:

Adjourn: Dennis Mahoney made the motion to adjourn at 10:00 PM. Motion carried unanimously.

## OWOSSO HISTORICAL COMMISSION

Regular Meeting Notice  
Monday, March 9, 2015, 7:00 P.M. Gould House

### Minutes

- Call to order:** Meeting was called to order at 7:00 P.M.
- Present:** Elaine Greenway, Chair; Jennifer Mahoney, Vice Chair; Robert Brockway; Erin Powell; Lorraine Weckwert; Nick Pidek; Dennis Mahoney; Adrian Montague; Robert Doran, Director
- Absent:** Sue Osika
- Approval of Agenda:** Dennis Mahoney Moved to accept the Agenda. Robert Brockway supported. Motion passed unanimously.
- Treasurer's Report:** Dennis Mahoney moved to accept the treasures report. Robert Brockway supported. Motion passed unanimously.
- Citizen Comments:** Cameron Paxton talked about his education and work experience, and offered his services to the Historical Commission in assisting us with finding and then applying for grants.
- Communications:** Robert Doran indicated that we found a lamp original to when Curwood was in residence at the Castle. Unfortunately the family in possession of the lamp is not yet willing to donate or sell. Robert Doran also announced the death of Ivan Conger.
- Director's Report:** Robert Doran indicated that in order to correctly and professionally begin the archiving process, the OCH should hire a consultant. Director Doran suggested the archivist at Durand Union Station, Michael Boudro. Director Doran then requested 12 consulting hours from Michael Boudro at \$8.50 an hour. **Lorraine Weckwert made motion to have consultant assist with the setting up of Past Perfect and archiving process. Robert Brockway supported. Motion passed unanimously.**
- Robert Doran explained that a sewer pipe froze at Gould House, creating a minor flood in the downstairs Ivan Conger Archive Room, as well as in the upstairs tenant's apartment. **Nick Pidek made motion to pay the plumbing bill of \$525. Dennis Mahoney supported. Motion passed unanimously.**
- Robert Doran indicated that a full engineering report of Gould House – electrical, plumbing, HVAC, & construction – was necessary in order to determine the possible cost and in what order repairs should be done on the house. Adrian Montague also indicated a relationship with Kettering University as a possibility for students completing such a report as an internship or thesis project. **Dennis Mahoney motioned to put out bids for a report. Robert Brockway supported. Motion passed unanimously.**

**Approval of**

**February Minutes:** Dennis Mahoney motioned to approve the February Minutes. Robert Brockway supported. Vote as follows: Elaine Greenway – Yes; Jennifer Mahoney – Yes; Erin Powell – Yes; Nick Pidek – Yes; Adrian Montague – Yes;

Lorraine Weckwert – No.

**Old Business:**

- 2015 House Tour – Change from Woodard 150<sup>th</sup> Anniversary
- Internet Site Map, development and budgets
- Acoustic Concert in Curwood Castle –Saturday, March 14 – 5:00 pm set up, 6:00 pm concert – Nick Pideck

**New Business:**

- Gould House Porches – Lorraine
- New Budget Format – Lorraine
- Acquisitions Committee and Budget – Lorraine
- BYLAWS Clarification – Lorraine
- Princess Parties at the Castle – Jennifer
- Past Perfect – hours for set up archiving; and index cards in possession of Lorraine
- Restocking Souvenirs for Castle and Gould House for Curwood
- Grant Writing
- Gould House and Curwood Castle Gardens
- Paymaster Building Lights
- Electricity for the Cabin

**Citizen Comments:**

**Adjourn:** Just prior to New Business, Dennis Mahoney moved to adjourn at 8:20 P.M. Robert Brockway supported.

**Vote as follows: Elaine Greenway – Yes; Jennifer Mahoney – Yes; Erin Powell – Yes; Nick Pidek – Yes; Adrian Montague – Yes;**

Lorraine Weckwert – No.

**MINUTES**  
**REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS**  
**CITY OF OWOSSO**  
**APRIL 21, 2015 at 9:30 AM**  
**CITY COUNCIL CHAMBERS**

**CALL TO ORDER:** The meeting was called to order by Chairman Randy Horton at 9:31a.m.

**ROLL CALL:** Was taken by Recording Secretary Marty Stinson.

**MEMBERS PRESENT:** Chairman Randy Horton, Vice-Chairman Christopher Eveleth, Secretary Daniel Jozwiak, Board Member William Wascher and Alternate John Horvath.

**MEMBERS ABSENT:** Board Member Kent Telesz; and Alternate Matt Grubb.

**OTHERS PRESENT:** Ms. Susan Montenegro, Assistant City Manager and Director of Community Development; Mr. Richard Merling, owner of 1302 W. Main Street.

**MINUTES: IT WAS MOVED BY BOARD MEMBER EVELETH AND SUPPORTED BY BOARD MEMBER JOZWIAK TO APPROVE THE MINUTES OF FEBRUARY 17, 2015 AS PRESENTED. YEAS: ALL. MOTION CARRIED.**

**COMMUNICATIONS:**

1. Staff memorandum
2. ZBA minutes from February 17, 2015
3. Class A Nonconforming Use Application & Materials – 1302 W. Main Street
4. Affidavit of notice

**COMMISSIONER/PUBLIC COMMENTS:** None.

**PUBLIC HEARINGS:**

**1. CLASS A NONCONFORMING USE DESIGNATION – 1302 W. MAIN STREET**

Ms. Susan Montenegro, Assistant City Manager and Director of Community Development, presented an aerial map of the designated property. She stated that Mr. Merling, property owner, presented a request for a variance so he could have a mini golf course at 1302 W. Main Street. He has a restaurant which also serves ice cream which is zoned B-1 at that address. It would need to be zoned B-4 for open air recreation space with a 400 foot setback from residential homes. Ms. Montenegro noted that in talking to Mr. Don Crawford, the City Manager, a Class A Non-conforming Use could be granted by this board instead of the variance.

Mr. Merling was introduced. He stated this request was made to accommodate open air recreation. There is a 34 x 50 cement pad which is uneven. It is currently used for storage, but is an eyesore. His hope is to create a small playscape area for a putt-putt golf. American Recycling makes a rubber-based product which would be applied to the cement pad and will correct the uneven surface and help with noise reduction. This will only be six to nine holes with no upper structures built on it. This won't draw people from wide areas, but hopefully will help to draw customers for a place to eat and a place for the kids to enjoy in the Westown area. This would be limited to about 15 customers at a time.

Chairman Horton asked about the hours. Mr. Merling commented about the current hours of 7A-3P. Because several other coffee stores have opened since we opened, we've expanded to a healthier menu and are now shifting our hours from 11A to the evening. He has talked with consultants and is trying to create a different niche in the Westown area.

Commissioner Wascher asked if this gets approved here, does this go to the Planning Commission for site plan review. Ms. Montenegro recommends that it would. Mr. Wascher asked about adding parking or lighting. Mr. Merling stated this would be used seasonally – only used with natural lighting. He would not be using it past dusk. Vic Holtz Associates were the original architects out of Monroe. His initial recommendations included the two handicap spaces next to the building and adequate parking currently.

*Draft*

The putt-putt is for food customers only and is not meant to draw in additional customers. Mr. Merling has consulted with his insurance company and they have adequate signage currently for the traffic flow.

Mr. Wascher asked about additional screening for neighbors. Mr. Merling stated that the residents that we've spoken with notice the M-21 traffic and the railroad train noise. There is no way the restaurant and putt-putt create more noise than those per the residents. The putt-putt will be shut down by 9 p.m.

It was asked about the gated area. Mr. Merling noted that there is a six foot gated fence surrounding the area; the front of the gates actually open. Sign will say that it is for restaurant patrons only. It will not be a congregating place for people to come. Gates will be locked every night. He has shared with his insurance company about liabilities. He already has stop signs, etc. in the parking lot. It is only one level – no climbing. It will be kid friendly and safe. The gate can be closed and locked even if the restaurant is open.

Ms. Montenegro asked if it would be possible to add slats into the chainlink fence to shield residents. Mr. Merling agreed it could if it was required. He stated that we believe it will be more appealing than a storage yard to the neighbors in the Westtown.

**MOTION BY BOARD MEMBER EVELETH, SUPPORTED BY BOARD MEMBER HORVATH WHEREAS, THE OWOSSO ZONING BOARD OF APPEALS, AFTER REVIEWING THE CASE FOR THE CLASS A DESIGNATION FOR NONCONFORMING USE FOR 1302 W. MAIN STREET, PARCEL NUMBER 050-537-000-042-00 WITH THE FOLLOWING FINDINGS:**

- 1. WILL NOT BE CONTRARY TO THE PUBLIC HEALTH, WELFARE, OR THE SPIRIT OF THE CHAPTER;**
- 2. THAT THE STRUCTURE OF THE PUTT-PUTT COURSE WILL NOT DECREASE THE VALUE OF NEARBY PROPERTIES;**
- 3. THAT THE STRUCTURE WAS LAWFUL AT THE TIME IT WAS BUILT;**
- 4. AND THAT NO USEFUL PURPOSE WOULD BE SERVED BY STRICT APPLICATION TO THE LETTER OF THE RESTRICTIONS.**

Chairman Horton noted the letters and petition of support received with approximately 12 to 15 surrounding residents and neighbors that are glad this business is a part of the neighborhood. The neighbor immediately to the west is also supportive. .

**YEAS ALL. MOTION CARRIED.**

**COMMISSIONER/PUBLIC COMMENTS:**

ZBA elections are in July per Chairman Horton.

Board Member Eveleth who is also a Councilmember brought the Zoning Board up to date on several issues including the code enforcement on the racks off of Corunna Avenue. His building will begin renovation this week; the building next to his is also under renovation. Discussion continued about the Matthews Building, Dollar General, and the Armory Building.

**ADJOURNMENT:**

**MOTION BY BOARD MEMBER WASCHER, SUPPORTED BY BOARD MEMBER HORVATH TO ADJOURN AT 10:07 A.M. UNTIL THE NEXT REGULARLY SCHEDULED MEETING ON TUESDAY, MAY 19, 2015, IF ANY REQUESTS ARE RECEIVED.**

**YEAS: ALL. MOTION CARRIED.**

---

Dan Jozwiak, Secretary

m.m.s