

**CITY OF BERKLEY PUBLIC NOTICE
REGULAR CITY COUNCIL MEETING
Monday, August 8, 2022
7:00 P.M. – City Hall
248-658-3300**

**CALL 39th COUNCIL TO ORDER
APPROVAL OF AGENDA
INVOCATION – RABBI MATT ZERWEKH
PLEDGE OF ALLEGIANCE
PUBLIC COMMENT
ORDER OF BUSINESS**

Consent Agenda

1. **APPROVAL OF THE MINUTES**: Matter of [approving the minutes](#) of the 39th Regular City Council meeting on Monday, July 18, 2022.
2. **MOTION NO. M-77-22**: Matter of [approving participation](#) in the “Tie Michigan Teal” campaign to promote awareness of ovarian cancer and its symptoms.
3. **PROCOLAMATION NO. P-23-22**: Matter of [proclaiming September 2022](#) as National Suicide Prevention Month.
4. **PROCOLAMATION NO. P-24-22**: Matter of [proclaiming September 2022](#) as National Recovery Month.
5. **PROCOLAMATION NO. P-25-22**: Matter of [proclaiming September 2022](#) as Childhood Cancer Awareness Month.
6. **PROCOLAMATION NO. P-26-22**: Matter of [proclaiming September 2022](#) as National Preparedness Month.
7. **PROCOLAMATION NO. P-27-22**: Matter of [proclaiming September 15-October 15, 2022](#) as Hispanic Heritage Month.

Regular Agenda

1. **RECOGNITIONS/PRESENTATIONS**: Matter of any recognitions or presentations from the Consent Agenda.
2. **MOTION NO. M-78-22**: Matter of [approving the Macomb County Cooperative Bid](#) Program purchase of one (1) 2023 Ford F150 pickup truck at a total cost of \$52,706 from Signature Ford of Owosso, Michigan.
3. **MOTION NO. M-79-22**: Matter of [authorizing the purchase](#) of inclusive play equipment at Jaycee Park at a cost not to exceed \$241,055.40 from Landscape Structures, Inc. SDS 12-0395, PO Box 86 Minneapolis, MN 55486-0395. Funds for this expenditure will come from account 615-950-974-000.
4. **MOTION NO. M-80-22**: Matter of [authorizing the purchase](#) of rubber surfacing and installation costs for play equipment at Jaycee Park at a cost not to exceed \$280,833.28 with an added \$14,000 for contingencies to Penchura, LLC., 889 S. Old US 23, Brighton, MI 48114. Funds for this expenditure will come from account 615-950-974-000.
5. **MOTION NO. M-81-22**: Matter of [awarding a contract for installation](#) of fencing at Community Field 2 and 3 at a cost not to exceed \$28,863 to the lowest qualified bidder, Motor City Fence Co., 209 South Blvd. E., Rochester Hills, MI 48307. In addition, allocate \$2,886.30 for contingencies. Funds for this expenditure will come from account 614-950-974-000.
6. **MOTION NO. M-82-22**: Matter of [authorizing the City Manager](#) to approve the proposal from Carlisle Wortman Associates, Inc. to provide professional planning services at a cost of \$2,000/month (2022 & 2023) and \$2,200/month (2024/2025) through August, 2025. Funds for this expenditure will come from account 101-801-817-000.

7. **MOTION NO. M-83-22:** Matter of [authorizing the City Manager](#) to execute a Uniform Video Service Local Franchise Agreement between the City of Berkley and WideOpenWest Michigan, LLC.

COMMUNICATIONS

ADJOURN

Note: The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon four working days' notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Victoria Mitchell, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).

Note: Official minutes of City Council Meetings and supporting documents for Council packets are available for public review in the City Clerk's Office during normal working hours. Anyone wishing to submit correspondence for the meeting may send an email to clerk@berkleymich.net or call 248-658-3310 by 5 p.m. on the day of the meeting.

**THE REGULAR MEETING OF THE THIRTY-NINTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN
WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, JULY 18, 2022 BY MAYOR TERBRACK**

PRESENT: Steve Baker Bridget Dean
 Ross Gavin Dennis Hennen
 Natalie Price Jessica Vilani
 Daniel Terbrack

APPROVAL OF AGENDA

Councilmember Baker moved to approve the Agenda
Seconded by Councilmember Gavin
Ayes: Dean, Gavin, Hennen, Price, Vilani, Baker, and Terbrack
Nays: None
Motion Approved.

INVOCATION: Reverend Pamela Gabel

PUBLIC COMMENT

Audrianna Ellen, Berkley, talked about Ordinance 22-42 and asked City Council to consider amending the ordinance so it can allow someone to have more than three pets in the city.

Theresa Revait, Berkley, spoke regarding short-term rentals. She talked about her concern for short term rentals and the need for regulating them. She referred to an article by Bloomberg stating how Air B N B is covering up dangerous situations.

Jim Phillips, Berkley, spoke about his concern regarding the marihuana dispensary that is supposed to be located on Woodward and why he thinks it is likely to fail.

Jessica Worrall, Berkley, voiced her opinion on removing the invocation from the City Council agenda. She asked for a vote to be added on the next City Council agenda to remove the invocation from the City Council meetings.

Larry Kauffman, Berkley, said came before City Council this evening as a last resort. He would like to see some modifications to some ordinances with setbacks regarding buildings and items of possession that are lawfully allowed near property lines. He said he would like to see items set back 3 to 5 feet from the property lines and as well as the property be properly maintained along the property line.

Robert Lathrop, Berkley, talked about Councilmember Hennen's comments regarding the Pride Block Party at the June 6th City Council meeting. He is concerned about what Councilmember Hennen said and also that since Councilmember Hennen serves as a liaison on the Tree Board, he is not sure how the members will respond to him when he returns.

Lisa Kempner, Berkley, spoke regarding the invocation during the City Council meetings and would like to see it removed. She talked about how government and religion are not good partners and discussed some other options to let others still include their own form of prayer before the City Council meetings. She asked Council to allow the residents to be as religious or nonreligious as they would like to be.

Christine Gale, Berkley, asked Council to remove the invocation from the agenda. She said as a non-religious person it makes her feel uncomfortable.

Bobby Lawrence, from Senator Bullock's office, commented that he is here to say they are here, they care, and they are here to work with us.

Mike McGuinness, Downtown Development Authority Executive Director, thanked the community for coming out to the Inaugural Berkley Pride Block Party and about 1500 people attended. He also talked about the business called, Peninsulas, and its new location in the downtown is now open.

Dallas, Berkley, said after listening to those speaking he agreed we should separate Church and State.

Consent Agenda

Councilmember Baker moved to approve the following Consent Agenda, seconded by Councilmember Vilani:

APPROVAL OF THE MINUTES: Matter of approving the minutes of the 39th Regular City Council meeting on Monday, June 20, 2022.

WARRANT: Matter of approving Warrant No. 1376.

ORDINANCE NO. O-03-22: Matter of considering the Second Reading and Adoption of an Ordinance of the City Council of the City of Berkley, Michigan to Amend Articles II and III, of Chapter 130, Vegetation, of the City of Berkley Code of Ordinances to Modify Trees, Bushes and Shrubs, and Noxious Weeds and to add Article IV, Invasive Species.

MOTION NO. M-65-22: Matter of approving to cast Berkley's official vote for the following to serve as a Trustee on the Board of Trustees for the MML Workers' Compensation Fund and directing the City Clerk to send in the marked ballot.

MOTION NO. M-66-22: Matter of appointing the Finance Director, Mark Pollock, as the City of Berkley's representative and the Public Works Director, Shawn Young, as the alternate representative to the Southeastern Oakland County Resource Recovery Authority (SOCRRA) Board of Trustees for the fiscal year beginning July 1, 2022; and instructing the City Clerk to send a copy of this motion to the SOCRRA Board.

MOTION NO. M-67-22: Matter of appointing the Berkley Public Works Director, Shawn Young, as the City of Berkley's representative and the Finance Director, Mark Pollock, as the alternate representative to the Southeastern Oakland County Water Authority (SOCWA) Board of Trustees for the fiscal year beginning July 1, 2022; and instructing the City Clerk to send a copy of this motion to the SOCWA Board.

MOTION NO. M-68-22: Matter of approving the 1-Year contract renewal with Oakland County Equalization for assessing and related services and costs for the fiscal year 7/1/2022 through 6/30/2023 and authorizing the Mayor and City Clerk to sign the contract and forward four signed copies to Oakland County Equalization for their signature.

Ayes: Gavin, Hennen, Price, Vilani, Baker, Dean, and Terbrack

Nays: None

Motion Approved.

Regular Agenda

RECOGNITIONS/PRESENTATIONS: Matter of any recognitions or presentations from the Consent Agenda.

There were no recognitions or presentations from the consent agenda.

PRESENTATION: Matter of receiving a presentation by Annaka Norris of Main Street Oakland County regarding the City of Berkley's Main Street Accreditation Certificate and the importance Main Street has for the City.

Annaka Norris started off by saying that it is Berkley's fourth year being accredited and the sixth year in the program. She invited Mike McGuiness to come up and accept the accreditation certificate on behalf of the Berkley Downtown Development Authority (DDA). She thanked everyone as well.

Mike McGuiness thanked Main Street Oakland County on behalf of the community and the Downtown Development Authority. He talked about how they receive funding from them and continue to pursue more funding as well. He also thanked City Council for helping to participate in the accreditation process as well.

Mayor Pro Tem Dean recognized all the work that goes into this and thanked Mike McGuiness as well as Main Street Oakland County, the residents, and volunteers. She said as both a business owner and resident in Berkley, she is grateful for what Main Street Oakland County brings to the city's downtown.

MOTION NO. M-69-22: Matter of approving the appointments to various boards and commissions.

Councilmember Price moved to approve Motion No. M-69-22

Seconded by Councilmember Baker

Ayes: Hennen, Price, Vilani, Baker, Dean, Gavin, and Terbrack

Nays: None

Motion Approved.

PUBLIC COMMENT FOR MOTION NO. M-70-22:

Two representatives for the marihuana business license applicant, Butter, spoke and expressed they pleasure to be able to do business in the city.

Councilmember Hennen asked if the license is approved, when would they expect to start construction and when they would anticipate opening?

The representative for Butter said as soon as they have their construction documents they will submit them for permits which he said will take about two weeks. He said that they will most likely be ready to do business on April 1st.

MOTION NO. M-70-22: Matter of approving marihuana business license #PMA20-0003 for Operation Grow/butter to be located at 2222 W. 11 Mile Road.

Councilmember Vilani moved to approve Motion No. M-70-22

Seconded by Mayor Pro Tem Dean

Ayes: Price, Vilani, Baker, Dean, Gavin, Hennen, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-71-22: Matter of approving Special Land Use request PSU-01-22 at 2684 Coolidge Highway and 2688 Coolidge Highway to permit outdoor dining in the Downtown District.

Councilmember Baker moved to approve Motion No. M-71-22

Seconded by Councilmember Gavin

Ayes: Vilani, Baker, Dean, Gavin, Hennen, Price, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-72-22: Matter of authorizing the City Manager to approve the proposal from Hubbell, Roth & Clark, Inc. (HRC) to provide professional engineering services at a cost not to exceed

\$10,849.48 for Oxford Park path extension. Funds for this expenditure will come from account number 614-950-821-000.

Mayor Pro Tem Dean moved to approve Motion No. M-72-22

Seconded by Councilmember Price

Ayes: Baker, Dean, Gavin, Hennen, Price, Vilani, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-73-22: Matter of approving the purchase of a Video Surveillance and Access Control System for the Department of Public Works at a total cost not to exceed \$77,149.79 from Presidio. Funds will come from an amended account 592-536-982-592.

Councilmember Gavin moved to approve Motion No. M-73-22

Seconded by Councilmember Vilani

Ayes: Dean, Gavin, Hennen, Price, Vilani, Baker, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-74-22: Matter of approving the purchase of a 2023 Elgin Broom Badger Sweeper at a total cost not to exceed \$290,000 from Bell Equipment Company.

Mayor Pro Tem Dean moved to approve Motion No. M-74-22

Seconded by Councilmember Hennen

Ayes: Gavin, Hennen, Price, Vilani, Baker, Dean, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-75-22: Matter of adopting the revisions to the City of Berkley Downtown Development Authority bylaws.

Councilmember Baker moved to approve Motion No. M-75-22

Seconded by Councilmember Price

Ayes: Hennen, Price, Vilani, Baker, Dean, Gavin, and Terbrack

Nays: None

Motion Approved.

MOTION NO. M-76-22: Matter of adopting updated City of Berkley Freedom of Information Act (FOIA) Procedures and Guidelines.

Councilmember Baker moved to approve Motion No. M-76-22

Seconded by Councilmember Gavin

Ayes: Price, Vilani, Baker, Dean, Gavin, Hennen, and Terbrack

Nays: None

Motion Approved.

COMMUNICATIONS

COUNCILMEMBER VILANI: said that the Technology Advisory Committee (TAC) meeting in July was canceled and they are scheduled to meet again in August with the Communications Advisory Committee (CEAC). She gave an update from the Berkley Chamber of Commerce and congratulated them on another successful Berkley Street Art Festival. She also said that Berkley Chamber members still have time to sponsor Cruise Fest t-shirts and they also accepting advertising for the 2022 Berkley Huntington Woods guide that will be published this coming fall. Finally, she said there will be a "Berk Perk" discount card that will be sold to the general public later this year and for more information to have your business involved in that to reach out to the Berkley Chamber.

COUNCILMEMBER GAVIN: said there were a couple items from the last Planning Commission meeting that were on the City Council's agenda this evening. He said that the next Planning Commission meeting will be July 26th at 7:00pm in the council chambers. He announced that there has been no Environmental Advisory Committee meeting since they last council meeting and that the next meeting would be July 21st at 6:30pm on the second floor of the public safety building. Finally, he said he wanted to take a moment to thank Marc Richardson for his service on the Planning Commission.

MAYOR PRO TEM DEAN: talked about the summer events being offered from the Parks and Recreation Department. She said the event "Movies in the Park" will continue on July 19th and will start at 7:00pm at Oxford Park. She said that Summer Fest continues on July 21st with the annual "Jaycee Jamboree" at Jaycee Park and begins at 5:30pm. She also said that the Summer Concert Series "Berkley Beats" continues on July 27th at Oxford Park at 7:00pm and future dates for the concert series will be on August 10th and October 31st. Finally, she said more information regarding the Parks and Recreation department events you can visit recreation.berkleymich.org or call (248) 658-3470.

COUNCILMEMBER BAKER: said that the Historical Committee is happy to hear that the visitors are enjoying the new museum layout. He also talked about the new displays at the museum and the new partnership with the Berkley School District's archives. He said the hours for the historical museum are Wednesdays from 10:00 am – 1:00pm and Sundays from 2:00 – 4:00pm. He also said you can visit their website at berkleyhistory.com. He talked about the last Downtown Development Authority (DDA) meeting that consisted of the Berkley Pride Block Party and what they can do to improve it for next year, various improvements for the downtown overall, and he also mentioned opportunities to volunteer for the various events as well. He said if you want to find out more information about the downtown you can visit downtownberkley.com. He quoted Aristotle, "The aim of art is not to represent the outward appearance of things, but their inward significance." He talked about how the Berkley Street Art Fest was a success and complimented everyone that had participated. Finally, he wished everyone to stay safe and to hug someone they love.

COUNCILMEMBER PRICE: welcomed the newest Library Board member, Margaret McGee, to the board and talked about the Library Board's next meeting on July 20th and how they will be discussing the board's proposed updates to their establishing ordinance as well as their regular business. She also said as the City Council's liaison to the Citizens Engagement Advisory Committee (CEAC) she would like to welcome their newest member, Jacob Robinson. She talked about how the CEAC is partnering with the Technology Advisory Committee as a focus group for the city's current branding and website development initiative. Finally, she talked about the upcoming Primary Election on August 2nd and emphasized the importance of voting and encouraged everyone to get out and vote.

COUNCILMEMBER HENNEN: talked about the Tree Board and how there is a small group of them are preparing a tree canopy study and when the board meets again in September, they will review it and make recommendations on it. He said that at the last Zoning Board of Appeals meeting, they approved the use of an old television repair building on Twelve Mile as a duplex and denied a variance for a building on Eleven Mile for a combination work and live unit.

CITY MANAGER BAUMGARTEN: reminded everyone to be safe during these warmer months. He also wanted to thank state and federal leaders and the city has been pursuing federal funding for much needed capital projects and they have gotten some good news regarding this and he is hopefully to be able to turn it into some good capital projects soon.

CITY CLERK MITCHELL: talked about the upcoming State Primary Election on Tuesday, August 2nd. She said that all precincts will be open from 7:00am – 8:00 pm. She added that is it not too late to receive an absentee ballot as well. For anyone for wishes to vote absentee she said they can contact the Clerk's Office and she also encouraged anyone that has already completed their absentee ballot to return it as soon as they can. She said that starting tomorrow residents they want to register to vote at the Clerk's Office and need to include proof of residency and she gave examples of what documents would satisfy

the proof of residency requirement. She also said that the Clerk's Office would be open for election business only on Saturday July 30th from 8:30am – 4:30pm. She then talked about the recent redistricting that had recently taken into effect. She said they everyone should have been mailed a new voter identification card. She wanted to also emphasize that the redistricting has not affected anyone's polling location but everyone does have new district numbers for their various representatives and the city is now split into two different State Representative Districts. Finally, she said that if anyone has questions they can contact the Clerk's Office by either calling (248) 658-3310, emailing clerk@berkleymich.net, or by coming into the office.

CITY ATTORNEY STARAN: had nothing to report this evening.

MAYOR TERBRACK: talked about all the various events that had taken place since that last City Council meeting he had attended. This included the Art Bash, Lids for Kids, tournaments hosted by the Berkley Mom's and Dad's Clubs, the Pride Block Party, and the Street Art Fest. He also talked about the great amenities the community has to offer but he said the single best amenity the city has is the residents. Finally, he thanked the residents for making Berkley a special and unique place to be.

ADJOURNMENT

Mayor Pro Tem Dean moved to adjourn the Regular Meeting at 8:33 p.m.

Seconded by Councilmember Baker

Ayes: Baker, Dean, Gavin, Hennen, Price, Vilani, and Terbrack

Nays: None

Motion Approved.

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember
_____ to approve participation in the “Tie Michigan Teal” campaign to promote
awareness of ovarian cancer and its symptoms.

Ayes:

Nays:

Motion:



Dear Administrator:

Tie Michigan Teal is a statewide campaign, designed to promote awareness of ovarian cancer and its symptoms. Teal is the color representing ovarian cancer. Ovarian cancer is the deadliest of the gynecologic cancers and one of the five leading cancer related deaths among women in the United States. Each year approximately 22,000 women are diagnosed with the disease and 15,000 women die. Women diagnosed with ovarian cancer have on average a five year survival rate of 45%. Unlike other cancers, there is no early detection test for ovarian cancer, and because the symptoms are often subtle and mimic other diseases, awareness of the symptoms is the key to early diagnosis.

The ***Tie Michigan Teal*** campaign is sponsored by the Michigan Ovarian Cancer Alliance and consists of volunteers tying teal ribbons on lamp posts, benches and businesses in the downtown areas and distributing awareness information to local businesses to display. The event will be held during the month of September, which has been declared National Ovarian Cancer Awareness Month. There is no cost to the city and the ribbons will be taken down at the end of the month.

I am asking you to grant permission for our volunteers to tie ribbons throughout your town/city this September, 2022. Please sign on the bottom of this letter and return the signed letter to the volunteer whose name and contact information is below. Thank you for your support of our efforts to save women's lives. If you have any questions or concerns, please contact us at: info@mioca.org.

Sincerely,

Diann Glaza-Helbling

Tie Michigan Teal Coordinator

MAYOR/TOWN OFFICIAL

TOWN/STATE



Matthew Baumgarten, City Manager

April 21, 2022

Please return the signed letter to the volunteer listed below. She/he is responsible for the Tie the Michigan Teal Campaign in your city/town.

**VOLUNTEER NAME
INFORMATION**

CONTACT

Marcia Gurche

mgurche@gmail.com

A PROCLAMATION
of the Council of the City of Berkley, Michigan
Proclaiming September 2022 as National Suicide Prevention Month

P-23-22

- WHEREAS,** September is known as National Suicide Prevention Month and is intended to help raise awareness surrounding suicide prevention resources available in the community; and
- WHEREAS,** World Suicide Prevention Day is observed each year on September 10; and
- WHEREAS,** Suicidal thoughts can affect anyone regardless of age, gender, race, orientation, income level, religion, or background; and
- WHEREAS,** According to the American Foundation for Suicide Prevention (A.F.S.P.), Suicide is the 10th leading cause of death among adults, and the 2nd leading cause of death among individuals between the ages of 10 and 34 in the United States; and
- WHEREAS,** According to the U.S. Centers for Disease Control and Prevention (CDC), each year more than 48,000 people die by suicide; and
- WHEREAS,** In May 2020, during the COVID-19 pandemic, emergency department visit for suspected suicide attempts began to increase among adolescents aged 12-17 years, especially girls; and
- WHEREAS,** Organizations like the National Alliance on Mental Illness (NAMI) and National Suicide Prevention Lifeline, 800-273-TALK (8255) work to help individuals in crisis and provide resources to shed light on this highly stigmatized topic; and
- WHEREAS,** In 2020, Congress designated the new 988 dialing code to operate through the existing National Suicide Prevention Lifeline to help expand the crisis care system to better provide direct, life-saving services to all in need.; and
- WHEREAS,** Every year thousands of individuals die by suicide, leaving behind friends and family members to navigate the tragedy of loss. Often feelings of shame and stigma prevent them from talking openly; and
- WHEREAS,** Oakland Community Health Network (OCHN) is committed to being a Zero Suicide organization and cultivating a network of providers who are engaged in the Zero Suicide philosophy.

NOW, THEREFORE, THE CITY OF BERKLEY HEREBY PROCLAIMS

- SECTION 1:** That the month of September 2022 is hereby proclaimed as *National Suicide Prevention Month* in the City of Berkley.
- SECTION 2:** The City of Berkley calls upon all citizens, government agencies, public and private institutions, businesses, and schools to recommit our community to increasing awareness and understanding of suicide prevention, and the need for appropriate and accessible services to assist individuals in crisis.

Proclaimed this 8th day of August, 2022 at a Regular Meeting of the Berkley City Council.

Daniel J. Terbrack, Mayor

Attest:

Victoria Mitchell, City Clerk

A PROCLAMATION
of the Council of the City of Berkley, Michigan
Proclaiming September 2022 as National Recovery Month

P-24-22

- WHEREAS,** Substance use recovery is important for individual well-being and vitality, as well as for families, friends, communities, and businesses; and
- WHEREAS,** According to the Substance Abuse and Mental Health Services Administration (SAMHSA), in 2019, 9.5 million people 18 or older had both a substance use disorder and a mental illness; and
- WHEREAS,** We will continue to educate and raise awareness of the risks and potential harm associated with prescription drug misuse; and
- WHEREAS,** We believe everyone facing substance use disorders is capable of living a life in recovery; and
- WHEREAS,** Stigma and stereotypes associated with substance use disorders often keep people from seeking treatment that could improve their quality of life; and
- WHEREAS,** Substance use disorders occur when the recurrent use of alcohol and/or drugs causes clinically or functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home; and
- WHEREAS,** Substance use disorder recovery is a journey of healing and transformation, enabling people to live in a community of their choice while striving to achieve their full potential; and
- WHEREAS,** Substance use disorder recovery benefits individuals living with these disorders by focusing on their abilities to live, work, learn, and fully participate and contribute to our society, and also enriches the culture of our community.

NOW, THEREFORE, THE CITY OF BERKLEY HEREBY PROCLAIMS

- SECTION 1:** That the month of September 2022 is hereby proclaimed as *National Recovery Month* in the City of Berkley.
- SECTION 2:** The City of Berkley calls upon all citizens, government agencies, public and private institutions, businesses, and schools to recommit our community to increasing awareness and understanding of substance use, and the need for appropriate and accessible services to promote recovery.

Proclaimed this 8th day of August, 2022 at a Regular Meeting of the Berkley City Council.

Daniel J. Terbrack, Mayor

Attest:

Victoria Mitchell, City Clerk

A PROCLAMATION
of the Council of the City of Berkley, Michigan
Proclaiming September 2022 as Childhood Cancer Awareness Month

P-25-22

- WHEREAS,** 43 children in the United States will be diagnosed with cancer each day at an average age of six-years-old, and of those diagnosed, one out of five children will not survive the disease; and
- WHEREAS,** Pediatric cancer is not just one disease but is made up of a dozen types and subtypes of cancer, these types of cancers are most often very different from those that affect adults; and
- WHEREAS,** Pediatric cancers can be diagnosed in children regardless of their gender, race, orientation, income level, religion, or background; and
- WHEREAS,** Pediatric cancer is the leading cause of death by disease in US children under 15 years of age, surpassing that of AIDS, asthma, cystic fibrosis, diabetes, and muscular dystrophy combined; and
- WHEREAS,** The causes of most pediatric cancers are largely unknown and not strongly linked to lifestyle, unlike adult cancers; and
- WHEREAS,** Two-thirds of pediatric cancer patients will develop long-lasting chronic conditions resulting from treatment; and
- WHEREAS,** The pediatric cancer rates have been rising for the past decades, and approximately 15,780 adolescents in the US under the age of 19 will be diagnosed with cancer in 2022; and
- WHEREAS,** In the last 25 years, only 3 drugs have been specifically developed for children's cancer; and
- WHEREAS,** Less than 5% of the federal government's total funding for cancer research is dedicated to childhood cancers, only about 4% of funds raised for the National Cancer Institute go directly to pediatric cancer research, and funding for pediatric cancer research has continued to steadily decrease since 2003; and
- WHEREAS,** Despite major advances in treatment, it is still critically important to conduct research and increase awareness regarding pediatric cancer.

NOW, THEREFORE, THE CITY OF BERKLEY HEREBY PROCLAIMS

SECTION 1: That the month of September 2022 is hereby proclaimed as *Childhood Cancer Awareness Month* in the City of Berkley.

Proclaimed this 8th day of August, 2022 at a Regular Meeting of the Berkley City Council.

Daniel J. Terbrack, Mayor

Attest:

Victoria Mitchell, City Clerk

A PROCLAMATION
of the Council of the City of Berkley, Michigan
Proclaiming September 2022 as National Preparedness Month

P-26-22

- WHEREAS,** Each year Michigan experiences a variety of emergencies and natural disasters that pose significant dangers to our communities and affect the lives of many Michiganders. Whether facing the pandemic, damaging floods or drought, or winter weather, it is vital that we remain prepared for any disaster; and
- WHEREAS,** Across Michigan, we have seen communities band together to support their fellow neighbors in the face of disaster. Our individual and collective preparedness is vital to handle any threats and reduce the loss of life and property. We all must work together to develop preparedness plans which can help minimize the impact of disaster for ourselves, our families, and our communities. Individuals and families are encouraged to develop and practice emergency plans to protect their household and property by taking time to create a communication strategy, decide on an emergency meeting location, build a three-day disaster preparedness kit, sign up for emergency alerts; and
- WHEREAS,** Additional preparedness considerations should be taken with regard to young children, residents who are older, individuals with access and functional needs, those with medical devices, and family pets. Preparedness plans should also include financial preparedness. Saving money is the best defense against disasters. Individuals, families, and business owners should ensure they have access to financial, insurance, and medical records; and
- WHEREAS,** By staying prepared, we can mitigate the lasting and damaging effects of disasters. Each September, we all participate in National Preparedness Month and renew our commitment to promoting emergency preparedness in homes, businesses, and communities across the state.

NOW, THEREFORE, THE CITY OF BERKLEY HEREBY PROCLAIMS

- SECTION 1:** That September 2022 is hereby proclaimed as *National Preparedness Month* in the City of Berkley.
- SECTION 2:** The City of Berkley calls upon the residents and business owners, to commit to reviewing and updating their Family and Business Preparedness plans.

Proclaimed this 8th day of August, 2022 at a Regular Meeting of the Berkley City Council.

Daniel J. Terbrack, Mayor

Attest:

Victoria Mitchell, City Clerk

A PROCLAMATION
of the Council of the City of Berkley, Michigan
Proclaiming September 15 – October 15, 2022 as Hispanic Heritage Month

- WHEREAS,** Michigan's Hispanic and Latinx population has grown from 2010 to 2020, according to the Census Bureau figures from the 2020 census the 564,422 Hispanic and Latinx residents in Michigan make up 5.6% of the state's population, up from 4.4% in 2010; and
- WHEREAS,** Berkley's Hispanic and Latinx population has grown by 1.1% from 2010 to 2020, according to the Census Bureau; and
- WHEREAS,** With over 60 million Hispanic Americans residing in the United States, Hispanic Americans make up the largest minority group in the nation and have significantly contributed to our government, culture, and economy over generations; and
- WHEREAS,** The Hispanic community in America has made many important advances in areas of law, religion, agriculture, art, music, education, technology, architecture, cuisine, theatre, and exploration; and
- WHEREAS,** During this month, Michigan's Hispanic American community will celebrate Hispanic Heritage Month through a series of special events featuring Hispanic history, food, dance, and art, celebrating the rich tradition and many contributions this community has made to the state of Michigan.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BERKLEY HEREBY PROCLAIMS

- SECTION 1:** That the month of September 15 – October 15, 2022 shall be recognized as *Hispanic Heritage Month* in the City of Berkley.
- SECTION 2:** The City of Berkley also calls upon the community to celebrate the many achievements and contributions made by Hispanic and Latinx Americans to our economic, cultural, spiritual, and political development.
- SECTION 3:** The City of Berkley urges the citizens, government agencies, public and private institutions, businesses, and schools in the City of Berkley to celebrate Hispanic and Latinx heritage and culture within our community, and continue our efforts to create a world that is more just, peaceful, and prosperous for all.

Proclaimed this 8th day of August 2022 at a Regular Meeting of the Berkley City Council.

Attest:

Daniel J. Terbrack, Mayor

Victoria Mitchell, City Clerk

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to approve the Macomb County Cooperative Bid Program purchase of one (1) 2023 Ford F150 pickup truck at a total cost of \$52,706 from Signature Ford of Owosso, Michigan.

Ayes:

Nays:

Motion:

Justification:

1. One (1) new Ford F150 4X4 pickup truck were designated for purchase in the 2022-2023 Fiscal Year in accordance with the City of Berkley Capital Equipment Replacement Program (CERP). This vehicle is targeted to replace an existing 2006 Ford Escape
2. The new vehicle pricing is per the Macomb County Cooperative Bid Program at a significant discount over MSRP (list price).
3. The trucks come with a 36,000 miles or 36 months factory bumper-to-bumper warranty and a 60,000 miles or 60 months powertrain warranty with service provided by a local Ford dealer.
4. The existing replacement vehicle is expected to be sent to public auction once we have received the replacement vehicle.



CITY OF BERKLEY
DEPARTMENT OF PUBLIC WORKS
3238 BACON AVE, BERKLEY, MICHIGAN 48072

Transmittal Memo

To: Matthew Baumgarten, City Manager
Cc: Mark Pollock, Finance Director
From: Shawn Young, DPW Director 
Date: August 1st, 2022
Subject: Recommendation for Award - 2023 Ford F150 from Signature Ford

As part of the FY 2022-2023 budget process, funds were allocated for the replacement of a 2006 Ford Escape. For this replacement we are proposing to purchase a 2023 Ford F150 for a total cost of \$52,706.00.

This purchase would utilize the Macomb County Cooperative bid and would provide substantial savings over the MSRP (List) price.

The vehicle comes with a 36,000 miles or 36 months factory bumper-to-bumper warranty and a 60,000 miles or 60 months powertrain warranty with service handled by any local Ford dealer.

The unit was programmed in the 2022-2023 Capital Equipment Replacement Plan. Funds are allocated in the 2022-2023 Fiscal Budget under account number 592-536-985-000.

Feel free to contact our office with any questions or concerns.

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to authorize the purchase of inclusive play equipment at Jaycee Park at a cost not to exceed \$241,055.40 from Landscape Structures, Inc. SDS 12-0395, PO Box 86 Minneapolis, MN 55486-0395. Funds for this expenditure will come from account 615-950-974-000.

Ayes:

Nays:

Motion:

Memo

To: Matthew Baumgarten, City Manager
Cc: Mark Pollock, Finance Director
From: Theresa McArleton, Parks & Recreation Director
Date: 7/28/2022
Subject: Purchase and Install of New Play Equipment at Jaycee Park Recommendation of Award

The Parks & Recreation Department has planned updates to Jaycee park over the coming fiscal years. The first step in those updates is to remove the old play equipment and install an inclusive playground. The playground will be funded from the department's capital expenditure budget, as well as, additional funds that were received from the Michigan Economic Development Corporation's (MEDC) successful crowdfunding and match program that ran in the spring of 2022.

Through the Public Spaces Community Places program, the crowdfunding saw overwhelming support from donors and sponsorship at all levels. The sponsorship for this playground development enabled us to raise \$61,800. Those funds were matched with an additional \$50,000 from the MEDC, Patronicity and the Michigan Municipal League (MML). A total of approximately \$110,000 was raised giving the city \$490,000 combined with capital budget to develop a truly unique, large scale and inclusive playground.

I have been working for several months with the vendor to develop an inclusive playground that includes some of the main highlighted items discussed during the project's campaign. The attached rendering shows the final product of this work.

Due to surfacing requirements for accessible play as well as other play elements in this design, costs for this playground are higher than a typical play structure and development. The attached rendering illustrates close to 8,000 square feet of play area and soft surface material. The design includes a ramp structure with limited stairs, an accessible zipKrooz, an inclusive cozy dome, an inclusive and accessible we-go-round, an inclusive and accessible we-saw, sensory panels, a communication board, an area for sand play and more. Most of these items are a first for the City of Berkley and will truly offer an age and ability- inclusive playground.

After developing the attached rendering and working with the proposed vendor, the final cost for equipment, surface and installation is \$521,888.68 which is \$31,888.68 over what is budgeted and raised for this playground. Contingency fees of \$14,000 should be added only for any necessary installation or surface issues that could arise. Adjustments were made prior to bringing this to the council to reduce costs, but what is presented is what I believe makes the most sense for this project.

The City Manager and I have spoken regarding this item and though it is over budget, due to other capital projects coming in below what was budgeted for this fiscal year, we have funds in the capital line item to cover this cost. I do believe that this design and these play elements are necessary, desired by the community and will be a welcome and highly used addition to the park and city.

The benefits of inclusive play were espoused beautifully by many residents throughout the crowdfunding campaign. If you have not had a chance to review or watch the videos put together by the city's Communication Department regarding this, I encourage you and everyone to do so. The residents who spoke did so eloquently and with power and great advocacy.

You all also donated your own personal funds to the crowdfunding as did so many people. This park and playground will be incredible because of all the people and businesses who believe in it.

I am asking for City Council to award this project in two separate motions. The reason for this is because the first part is to secure the play equipment through the Sourcewell purchasing cooperative and Landscape Structures. Doing this allows us to take advantage of a 12% discount as seen in the attached proposal. The second motion will be to approve a proposal for the surfacing and installation from Penchura.

Penchura is the sole representative for Landscape Structures in Michigan. As a result, when using Landscape Structures for play equipment, you use Penchura. However, if we used Sourcewell for surfacing and installation, costs would be significantly higher for these items. Penchura can provide these costs at a much lower rate and we have been told 95% of municipalities who order from Landscape Structures do so using two different quoted proposals. The labor and surface costs tend to be higher when dictated by the national pricing schedule.

I've included a full proposal for play equipment, installation and surfacing from Sourcewell for you to compare the higher \$556,193.44 cost to purchase in this manner. My recommendation is to approve two separate motions and proceed to seek the biggest cost benefit for the city.

I recommend approval of the first motion on your agenda to purchase play equipment for Jaycee Park through the Sourcewell cooperative from Landscape Structures, Inc. SDS 12-0395, PO Box 86 Minneapolis, MN 55486-0395 at a cost not to exceed \$241,055.40. Funds for this expenditure will come from account 614-950-974-000.

I also recommend approval of a second motion on your agenda for installation and surfacing for Jaycee Park from the sole provider of Landscape Structures, Penchura, LLC. 889 S. Old US 23 Brighton, MI 48114 at a cost not to exceed \$280,833.28 with contingencies fees of \$14,000 allocated for installation and surfacing.

I believe very much in this park development and this expenditure. Inclusive play is good for all. I am honored to have had the opportunity to lead this project and grateful for the support the crowdfunding campaign received, partnering with the MEDC, Patronicity and the MML and all the effort the city's Community Engagement Officer put toward this funding and project. I believe it has made a very big difference in this playground and development.

I look forward to answering questions at the City Council meeting on August 8, 2022.

Please do not hesitate to call me with any questions or concerns.

ATTACHMENTS



Make all P.O.s, Contracts, and Checks Payable to:
Landscape Structures, Inc.
SDS 12-0395, PO BOX 86
Minneapolis, MN 55486-0395 USA

Proposal

Date	Project #
7/14/2022	22-1087-b

Bill To
City of Berkley 3238 Bacon Berkley, MI 48072

Ship To
City of Berkley Sean 3238 Bacon Berkley, MI 48072

Customer Contact	Customer Phone	Customer Fax	Terms	P.O. No.	Rep
Sean	248-658-3490	248-658-3491	Net 30		LAS

Item	Description	Qty	Weight	Price	Total
	Jaycee Park				
PlayBooster	PlayBooster Playground structre per design #1165596-1-1	1		162,150.00	162,150.00T
249558A	We-Go-Round w/DigiFuse Panels 2 Seats DB Only1	1		35,125.00	35,125.00T
186490A	We-saw™ (DB Only)	1		12,315.00	12,315.00T
194663B	ZipKrooz™ 50' Aluminum Posts	1		16,425.00	16,425.00T
196213B	ZipKrooz Assisted Additional Bay 50' Aluminum Posts	1		14,175.00	14,175.00T
168099A	Cozy Dome	1		5,140.00	5,140.00T
298208A	Symbol Communication Sign w/2 Posts 2" DB	1		1,900.00	1,900.00T
182503C	Welcome Sign Ages 5-12 Direct Bury	1		0.00	0.00T
174018A	Belt Seat w/Chains ProGuard Chains for 8' Beam Height	1		145.00	145.00T
237296A	Friendship Swing w/single Post swing frame 52" bury	1		3,750.00	3,750.00T
176038A	Full Bucket Seat w/Chains ProGuard Chains for 8' Beam Height	2		405.00	810.00T
177351A	Molded Bucket Seat w/Harness & ProGuard Chains for 8' Beam Height	1		990.00	990.00T
177332A	Single Post Swing Frame 8' Beam Height	1		1,475.00	1,475.00T
177332A	Single Post Swing Frame 8' Beam Height	1		1,095.00	1,095.00T
Freight	Freight	1		6,000.00	6,000.00T
discount	Special Discount for purchase using Sourcewell			-20,439.60	-20,439.60

Proposal good for 30 days.

Ship Via: common carrier

Delivery contact name and number: _____

Customer signature below constitutes a purchase order.

Subtotal	\$241,055.40
Sales Tax (0.0%)	\$0.00
Total	\$241,055.40



Make all P.O.s, Contracts, and Checks Payable to:
Landscape Structures, Inc.
SDS 12-0395, PO BOX 86
Minneapolis, MN 55486-0395 USA

Proposal

Date	Project #
7/14/2022	22-1087-b2

Bill To
City of Berkley 3238 Bacon Berkley, MI 48072

Ship To
City of Berkley Sean 3238 Bacon Berkley, MI 48072

Customer Contact	Customer Phone	Customer Fax	Terms	P.O. No.	Rep
Sean	248-658-3490	248-658-3491	Net 30		LAS

Item	Description	Qty	Weight	Price	Total
	Jaycee Park - full quote using Sourcewell				
PlayBooster	PlayBooster Playground structre per design #1165596-1-1	1		162,150.00	162,150.00T
249558A	We-Go-Round w/DigiFuse Panels 2 Seats DB Only1	1		35,125.00	35,125.00T
186490A	We-saw™ (DB Only)	1		12,315.00	12,315.00T
194663B	ZipKrooz™ 50' Aluminum Posts	1		16,425.00	16,425.00T
196213B	ZipKrooz Assisted Additional Bay 50' Aluminum Posts	1		14,175.00	14,175.00T
168099A	Cozy Dome	1		5,140.00	5,140.00T
298208A	Symbol Communication Sign w/2 Posts 2" DB	1		1,900.00	1,900.00T
182503C	Welcome Sign Ages 5-12 Direct Bury	1		0.00	0.00T
174018A	Belt Seat w/Chains ProGuard Chains for 8' Beam Height	1		145.00	145.00T
237296A	Friendship Swing w/single Post swing frame 52" bury	1		3,750.00	3,750.00T
176038A	Full Bucket Seat w/Chains ProGuard Chains for 8' Beam Height	2		405.00	810.00T
177351A	Molded Bucket Seat w/Harness & ProGuard Chains for 8' Beam Height	1		990.00	990.00T
177332A	Single Post Swing Frame 8' Beam Height	1		1,475.00	1,475.00T
177332A	Single Post Swing Frame 8' Beam Height	1		1,095.00	1,095.00T
Freight	Freight	1		6,000.00	6,000.00T
Install	Professional Certified Installation	1		157,080.00	157,080.00
PIP	Supply Poured in Place Rubber Surfacing	7,588		20.83	158,058.04T
discount	Special Discount for purchase using Sourcewell			-20,439.60	-20,439.60

Proposal good for 30 days.

Ship Via: common carrier

Delivery contact name and number: _____

Customer signature below constitutes a purchase order.

Subtotal	\$556,193.44
Sales Tax (0.0%)	\$0.00
Total	\$556,193.44



TOTAL SQUARE FOOTAGE
8,006 Sq. Ft.

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to authorize the purchase of rubber surfacing and installation costs for play equipment at Jaycee Park at a cost not to exceed \$280,833.28 with an added \$14,000 for contingencies to Penchura, LLC., 889 S. Old US 23, Brighton, MI 48114. Funds for this expenditure will come from account 615-950-974-000.

Ayes:

Nays:

Motion:



Jaycee Park - Berkley

Final Color - 07/15/2023

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Penchura

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to award a contract for installation of fencing at Community Field 2 and 3 at a cost not to exceed \$28,863 to the lowest qualified bidder, Motor City Fence Co., 209 South Blvd. E., Rochester Hills, MI 48307. In addition, allocate \$2,886.30 for contingencies. Funds for this expenditure will come from account 614-950-974-000.

Ayes:

Nays:

Motion:

Memo

To: Matthew Baumgarten, City Manager
Cc: Mark Pollock, Finance Director
From: Theresa McArleton, Director of Parks & Recreation
Date: 7/26/2022
Subject: Recommendation for Award of Baseball Fencing at Community Field 2 and 3

On Thursday, July 22, 2022 the City received three complete bids for ballfield fencing for Community Field 2 and 3 located at Community Park 2261 Robina. The work to be included in this bid involves removing some existing line fencing, replacing with gates, providing six (6) foot exterior fencing to shape the ballfields as well as cleaning up fencing and space near the batting tunnel at Community Park.

The three bids received were by all reputable companies that have done a number of jobs in the area. The lowest qualified bid was received by Motor City Fence Co. located at 209 South Blvd. E. Rochester Hills, MI 48307. They have performed many similar jobs in a number of neighboring communities for baseball fields. I spoke with several of their references on these projects and they all spoke highly of their quality of work.

I recommend approval of award of this bid to Motor City Fence Co. at a cost not to exceed \$28,863.00 with an additional 10% of \$2,886.30 for construction contingencies. Funds for this expenditure will come from account 614-950-974-000. The low qualified bid for this work came in lower than expected which leaves an unused balance in the capital improvement account for Parks & Recreation.

Installing this fencing is another step in upgrading our recreation facilities including our baseball fields.

As always, please do not hesitate to contact me with any questions regarding this matter. I will attend the August 8th City Council meeting to answer any questions.

ATTACHMENTS

CITY OF BERKLEY
“Install Fencing at Community Field 2 and 3”
For the Department of Parks & Recreation
Bid Opening: Thursday, July 21, 2022 @ 11 AM

<u>Business Name</u>	<u>Address</u>	<u>Bid (Base Services)</u>	<u>References/ Non-Collusive Affidavit/Non- Discrimination Affidavit</u>	<u>Conflict of Interest/ Hold Harmless/Iran Affidavit</u>
Future Fence Company	23450 Regency Park Drive Warren, Michigan, 48089	Comm. Field 2&3: \$35,243	Y/Y/Y	Y/Y/Y
Motor City Fence Co.	209 South Blvd. E. Rochester Hills, Michigan, 48307	Comm. Field 2&3: \$28,863	Y/Y/Y	Y/Y/Y
Nationwide Construction Group	69951 Lowe Plank Road Richmond, Michigan, 48062	Comm. Field 2&3: \$49,160	Y/Y/Y	Y/Y/Y

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember _____ to authorize the City Manager to approve the proposal from Carlisle Wortman Associates, Inc. to provide professional planning services at a cost of \$2,000/month (2022 & 2023) and \$2,200/month (2024/2025) through August, 2025. Funds for this expenditure will come from account 101-801-817-000.

Ayes:

Nays:

Motion:



CITY OF BERKLEY

COMMUNITY DEVELOPMENT

3338 COOLIDGE HWY, BERKLEY, MICHIGAN 48072

MEMORANDUM

To: Berkley City Council

From: Kristen Kapelanski, Community Development Director

Subject: **Proposal for Professional Planning Services**

Date: August 3, 2022

As you are aware, the City has appropriated funds in the 2022/23 budget year for professional planning consulting services and requested a proposal from Carlisle Wortman Associates, Inc. to perform these services. As you will recall, Carlisle Wortman very ably completed the recent Master Plan update and acted as the Interim Community Development Director prior to my start with the City.

These services would include a monthly retainer for ordinance research and writing and other administrative planning tasks, as needed and requested by staff including, public hearing noticing, board and commission packet preparation, sign permit reviews, pre-application meeting attendance, etc. Complex site plan reviews would be charged at an hourly review rate to be passed along to potential applicants. I recommend the City accept this proposal for professional planning services at a rate of \$2,000/month (2022/2023) and \$2,200/month (2024/2025). The contract would run through 2025.



Carlisle | Wortman
ASSOCIATES, INC.

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

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT, Entered into this **(Date)** by the **City of Berkley** hereinafter referred to as the “Client” and Carlisle/Wortman Associates, Inc. hereinafter referred to as the “Consultant.”

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

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

SECTION 1.0

PLANNING AND ZONING ADMINISTRATION SERVICES

The Consultant agrees to provide services in accordance with the Scope of Work set forth in Attachment I.

SECTION 2.0

COLLECTION OF DATA

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

SECTION 3.0

PAYMENT FOR SERVICES

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

SECTION 4.0

REPRESENTATION

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

SECTION 5.0**OWNERSHIP OF MATERIALS**

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

SECTION 6.0**LIMITATION OF LIABILITY**

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

SECTION 7.0**TERMS OF AGREEMENT**

The term of this Agreement shall be for a period from **(Date)** to **(three years from previous date)**, unless mutually extended.

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

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

WITNESS**CLIENT**

Daniel Terbrack,
City of Berkley, Mayor

Victoria Mitchell
City of Berkley, City Clerk

CONSULTANT

Benjamin R. Carlisle
Principal
Carlisle | Wortman Associates

Attachment I

Planning and Zoning Administration

Consultant will provide onsite services as requested in the City offices at a minimum of one-half day per week. However, additional time can be provided when requested by the Client. Under the retainer agreement, the Consultant will also be available for telephone consultation when we are not in your office. Duties may include but are not limited to the following:

1. Assist residents and potential applicants with zoning and planning questions by appointment, as needed.
2. Advise staff with public hearing and legal notices for rezoning, Ordinance amendments, and special uses.
3. Assist applicants in completing and filing applications for ZBA, rezoning, site plans, etc.
4. Assist staff with Planning Commission and ZBA agenda, notices, and packets.
5. Review zoning compliance applications in consultation with Community Development Director and Building Official.
6. Attend all pre-application meetings.
7. Other duties as requested by the City Manager and Community Development Director.

Monthly Retainer

A retainer will include up to eighteen (18) hours a month for off-site work for sign reviews, other permits and ordinance research and writing and telephone consultation between the Consultant's office and Client staff.

The fee for monthly retainer for off-site work and telephone consultation with City staff would be \$2,000/month (2022 & 2023) and \$2,200/month (2024/2025). If additional time is requested for office hours, minor studies, ordinance amendments or meeting attendance, hourly rates will be charged (Attachment II). All time will be documented in the Consultant's monthly invoices.

Development Review

Consultant will also provide development review for all site plans, special land use requests, rezoning, etc. Reports to the ZBA will also be provided if requested. Reviews will be transmitted to the Client in a timely fashion (usually one (1) week prior to the scheduled meeting) to allow the Planning Commission ample time to review the information. The Consultant will provide this service to the Client on an hourly basis and charge hourly rates (Attachment II) for all development reviews.

Attachment II

Hourly Rates

All work, including attendance at meetings, development reviews and minor studies and ordinance amendments not covered by retainer shall be performed hourly based on the fees provided below:

Project Team	Current Rates 2022	2023 Rates	2024 Rates	2025 Rates
Principal (B. Carlisle)	\$120	\$125	\$130	\$135
Principal/Senior Planner (M. Masson-Minock)	\$110	\$115	\$120	\$125
Project Planner	\$100	\$105	\$110	\$115
Zoning Administration	\$80	\$80	\$85	\$90
Support Staff	\$65	\$70	\$75	\$80

August 8, 2022 City Council Meeting

Moved by Councilmember _____ and seconded by Councilmember
_____ to authorize the City Manager to execute a Uniform Video Service
Local Franchise Agreement between the City of Berkley and WideOpenWest Michigan, LLC.

Ayes:

Nays:

Motion:

INSTRUCTIONS FOR UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

Pursuant to 2006 Public Act 480, MCL 484.3301 *et seq.*, any Video Service Provider seeking to provide video service in one or more service areas in the state of Michigan after January 30, 2007, shall file an application for a Uniform Video Service Local Franchise Agreement with the Local Unit of Government ("Franchising Entity") that the Provider wishes to service. Pursuant to Section 2(2) of 2006 PA 480, "Except as otherwise provided by this Act, a person shall not provide video services in any local unit of government without first obtaining a uniform video service local franchise as provided under Section 3." Procedures applicable to incumbent video service providers are set forth below.

As of the effective date (January 1, 2007) of the Act, no existing franchise agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the agreement. The incumbent video Provider, at its option, may continue to provide video services to the Franchising Entity by electing to do one of the following:

1. Terminate the existing franchise agreement before the expiration date of the agreement and enter into a new franchise under a uniform video service local franchise agreement.
2. Continue under the existing franchise agreement amended to include only those provisions required under a uniform video service local franchise.
3. Continue to operate under the terms of an expired franchise until a uniform video service local franchise agreement takes effect. An incumbent video Provider with an expired franchise on the effective date has 120 days after the effective date of the Act to file for a uniform video service local franchise agreement.

On the effective date (January 1, 2007) of the Act, any provisions of an existing Franchise that are inconsistent with or in addition to the provisions of a uniform video service local Franchise Agreement are unreasonable and unenforceable by the Franchising Entity.

If, at a subsequent date, the Provider would like to provide video service to an additional Local Unit of Government, the Provider must file an additional application with that Local Unit of Government.

The forms shall meet the following requirements:

- The Provider must complete both the "Uniform Video Service Local Franchise Agreement" and "Attachment 1 - Uniform Video Service Local Franchise Agreement" forms if they are seeking a new/renewed Franchise Agreement, and send the forms by mail (certified, registered, first-class, return receipt requested, or by a nationally recognized overnight delivery service) to the appropriate Franchising Entity. Until otherwise officially notified by the Franchising Entity, the forms shall be sent to the Clerk or any official with the responsibilities or functions of the Clerk in the Franchising Entity. "**Attachment 2 - Uniform Video Service Local Franchise Agreement**" is not required to be filed at this time *unless* it is being used regarding amendments, terminations, or transfers pertaining to an existing Uniform Video Service Local Franchise Agreement. (Refer to Sections X to XII of the Agreement, as well as Section 3(4-6) of the Act.)
- Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and **MUST BE KEPT CONFIDENTIAL.**
 1. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:

"[insert PROVIDER'S NAME]
[CONFIDENTIAL INFORMATION]"

2. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.
 3. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.
- Responses to all questions must be provided and must be amended appropriately when changes occur.
 - All responses must be printed out, typed, signed/dated (where appropriate), and mailed (certified, registered, first class, return receipt requested, or by a national recognized overnight delivery service) to the appropriate party.
 - The Agreement and Attachments are templates. Tab through the documents and fill in as appropriate, use the appropriate "dropdown box" (City/Village/Township) when indicated.
 - For sections that need explanation, if the Provider runs out of space, the Provider should then submit the application with typed attachments that are clearly identified.
 - The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by this Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the franchise agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."
 - A Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under this subsection, the franchise agreement shall be considered complete and the Franchise Agreement approved. The Provider shall notify both the Franchising Entity and the Michigan Public Service Commission of such an approved and completed Agreement by completing **Attachment 3 - Uniform Video Service Local Franchise Agreement**.
 - For changes to an existing Uniform Video Service Local Franchise Agreement (amendments, transfers, or terminations), the Provider must complete the "**Attachment 2 - Uniform Video Service Local Franchising Entity**" form, and send the form to the appropriate Franchising Entity.
 - For information that is to be submitted to the Michigan Public Service Commission, please use the following address:

Michigan Public Service Commission
Attn: Video Franchising
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Fax: (517) 241-2400

Questions should be directed to the Service Quality Division, Michigan Public Service Commission at (517) 2416100.

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

THIS UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT ("Agreement") is made, pursuant to 2006 PA 480, MCL 484.3301 *et seq.*, (the "Act") by and between the City of Berkley, a Michigan municipal corporation (the "Franchising Entity"), and WideOpenWest Michigan, LLC, a Delaware corporation doing business as WOW Internet Cable Phone.

I. Definitions

For purposes of this Agreement, the following terms shall have the following meanings as defined in the Act:

- A. "Cable Operator" means that terms as defined in 47 USC 522(5).
- B. "Cable Service" means that terms as defined in 47 USC 522(6).
- C. "Cable System" means that term as defined in 47 USC 522(7).
- D. "Commission" means the Michigan Public Service Commission.
- E. "Franchising Entity" means the local unit of government in which a provider offers video services through a franchise.
- F. "FCC" means the Federal Communications Commission.
- G. "Gross Revenue" means that term as described in Section 6(4) of the Act and in Section VI(D) of the Agreement.
- H. "Household" means a house, an apartment, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters.
- I. "Incumbent video provider" means a cable operator serving cable subscribers or a telecommunication provider providing video services through the provider's existing telephone exchange boundaries in a particular franchise area within a local unit of government on the effective date of this act.
- J. "IPTV" means internet protocol television.
- K. "Local unit of government" means a city, village, or township.
- L. "Low-income household" means a household with an average annual household income of less than \$35,000.00 as determined by the most recent decennial census.
- M. "METRO Act" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 *et seq.*
- N. "Open video system" or "OVS" means that term as defined in 47 USC 573.
- O. "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
- P. "Public rights-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.
- Q. "Term" means the period of time provided for in Section V of this Agreement.
- R. "Uniform video service local franchise agreement" or "franchise agreement" means the franchise agreement required under the Act to be the operating agreement between each franchising entity and video provider in this state.
- S. "Video programming" means that term as defined in 47 USC 522(20).
- T. "Video service" means video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.
- U. "Video service provider" or "Provider" means a person authorized under the Act to provide video service.
- V. "Video service provider fee" means the amount paid by a video service provider or incumbent video provider under Section 6 of the Act and Section VI of this Agreement.

II. Requirements of the Provider

- A. An unfranchised Provider will not provide video services in any local unit of government without first obtaining a uniform video service local franchise agreement as provided under **Section 3 of the Act** (except as otherwise provided by the Act).
- B. The Provider shall file in a timely manner with the Federal Communications Commission all forms required by that agency in advance of offering video service in Michigan.
- C. The Provider agrees to comply with all valid and enforceable federal and state statutes and regulations.
- D. The Provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the Franchising Entity.
- E. The Provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of federal, state, and local emergency messages over the emergency alert system applicable to cable operators.
- F. The Provider shall comply with the public, education, and government programming requirements of Section 4 of the Act.
- G. The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
 - i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(1)(cc); MCL 445.903(1)(ff) through (jj); MCL 445.903(2); MCL 445.905; MCL 445.906; MCL 445.907; MCL 445.908; MCL 445.910; MCL 445.911; MCL 445.914; MCL 445.915; MCL 445.916; MCL 445.918.
- H. The Provider agrees to comply with in-home wiring and consumer premises wiring rules of the Federal Communications Commission applicable to cable operators.
- I. The Provider shall comply with the Consumer Privacy Requirements of 47 USC 551 applicable to cable operators.
- J. If the Provider is an incumbent video provider, it shall comply with the terms which provide insurance for right-of-way related activities that are contained in its last cable franchise or consent agreement from the Franchising Entity entered before the effective date of the Act.
- K. The Provider agrees that before offering video services within the boundaries of a local unit of government, the video Provider shall enter into a Franchise Agreement with the local unit of government as required by the Act.
- L. The Provider understands that as the effective date of the Act, no existing Franchise Agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the Agreement.
- M. The Provider provides an exact description of the video service area footprint to be served, pursuant to **Section 2(3)(e) of the Act**. If the Provider is not an incumbent video Provider, the date on which the Provider expects to provide video services in the area identified under **Section 2(3)(e) of the Act** must be noted. The Provider will provide this information in Attachment 1 - Uniform Video Service Local Franchise Agreement.
- N. The Provider is required to pay the Provider fees pursuant to **Section 6 of the Act**.

III. Provider Providing Access

- A. The Provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
- B. It is a defense to an alleged violation of Paragraph A if the Provider has met either of the following conditions:
 - i. Within 3 years of the date it began providing video service under the Act and the Agreement; at least 25% of households with access to the Provider's video service are low-income households.
 - ii. Within 5 years of the date it began providing video service under the Act and Agreement and from that point forward, at least 30% of the households with access to the Provider's video service are low-income households.
- C. **[If the Provider is using telecommunication facilities]** to provide video services and has more than 1,000,000 telecommunication access lines in Michigan, the Provider shall provide access to its video service to a number of households equal to at least 25% of the households in the provider's telecommunication

service area in Michigan within 3 years of the date it began providing video service under the Act and Agreement and to a number not less than 50% of these households within 6 years. **The video service Provider is not required to meet the 50% requirement in this paragraph until 2 years after at least 30% of the households with access to the Provider's video service subscribe to the service for 6 consecutive months.**

- D. The Provider may apply to the Franchising Entity, and in the case of paragraph C, the Commission, for a waiver of or for an extension of time to meet the requirements of this section if 1 or more of the following apply:
- i. The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.
 - ii. Developments or buildings not being subject to competition because of existing exclusive service arrangements.
 - iii. Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
 - iv. Natural disasters
 - v. Factors beyond the control of the Provider
- E. The Franchising Entity or Commission may grant the waiver or extension only if the Provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the Franchising Entity or Commission shall establish a new compliance deadline. If a waiver is granted, the Franchising Entity or Commission shall specify the requirement or requirements waived.
- F. The Provider shall file an annual report with the Franchising Entity and the Commission regarding the progress that has been made toward compliance with paragraphs B and C.
- G. Except for satellite service, the provider may satisfy the requirements of this paragraph and Section 9 of the Act through the use of alternative technology that offers service, functionality, and content, which is demonstrably similar to that provided through the provider's video service system and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels and messages over the emergency alert system as required under Paragraph II(E) of this Agreement.

IV. Responsibility of the Franchising Entity

- A. The Franchising Entity hereby grants authority to the Provider to provide Video Service in the Video Service area footprint, as described in this Agreement and Attachments, as well as the Act.
- B. The Franchising Entity hereby grants authority to the Provider to use and occupy the Public Rights-of-way in the delivery of Video Service, subject to the laws of the state of Michigan and the police powers of the Franchising Entity.
- C. The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by the Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the Franchise Agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."
- D. The Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under **Section 3(3) of the Act**, the Franchise Agreement shall be considered complete and the Franchise Agreement approved.
- i. If time has expired for the Franchising Entity to notify the Provider, The Provider shall send (via mail: certified or registered, or by fax) notice to the Franchising Entity and the Commission, using Attachment 3 of this Agreement.
- E. The Franchising Entity shall allow a Provider to install, construct, and maintain a video service or communications network within a public right-of-way and shall provide the provider with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.
- F. The Franchising Entity may not discriminate against a video service provider to provide video service for any of the following:
- i. The authorization or placement of a video service or communications network in public right-of-way.
 - ii. Access to a building owned by a governmental entity.
 - iii. A municipal utility pole attachment.
- G. The Franchising Entity may impose on a Provider a permit fee only to the extent it imposes such a fee on incumbent video providers, and any fee shall not exceed the actual, direct costs incurred by the Franchising

Entity for issuing the relevant permit. A fee under this section shall not be levied if the Provider already has paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the permit fee under this section or is otherwise authorized by law or contract to place the facilities used by the Provider in the public right-of-way or for general revenue purposes.

- H. The Franchising Entity shall not require the provider to obtain any other franchise, assess any other fee or charge, or impose any other franchise requirement than is allowed under the Act and this Agreement. For purposes of this Agreement, a franchise requirement includes but is not limited to, a provision regulating rates charged by video service providers, requiring the video service providers to satisfy any build-out requirements, or a requirement for the deployment of any facilities or equipment.
- I. Notwithstanding any other provision of the Act, the Provider shall not be required to comply with, and the Franchising Entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by **Section 9 of the Act**.
- J. The Franchising Entity is subject to the penalties provided for under Section 14 of the Act.

V. Term

A. This Franchise Agreement shall be for a period of 10 years from the date it is issued. The date it is issued shall be calculated either by (a) the date the Franchising Entity approved the Agreement, provided it did so within 30 days after the submission of a complete franchise agreement, or (b) the date the Agreement is deemed approved pursuant to **Section 3(3) of the Act**, if the Franchising Entity either fails to notify the Provider regarding the completeness of the Agreement or approve the Agreement within the time periods required under that subsection.

B. Before the expiration of the initial Franchise Agreement or any subsequent renewals, the Provider may apply for an additional 10-year renewal under **Section 3(7) of the Act**.

VI. Fees

- A. A video service Provider shall calculate and pay an annual video service provider fee to the Franchising Entity. The fee shall be 1 of the following:
 - i. If there is an existing Franchise Agreement, an amount equal to the percentage of gross revenue paid to the Franchising Entity by the incumbent video Provider with the largest number of subscribers in the Franchising Entity.
 - ii. At the expiration of an existing Franchise Agreement or if there is no existing Franchise Agreement, an amount equal to the percentage of gross revenue as established by the Franchising Entity of _____% (percentage amount to be inserted by Franchising Entity which shall not exceed 5%) and shall be applicable to all providers
- B. The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.
- C. The Franchising Entity shall not demand any additional fees or charges from a provider and shall not demand the use of any other calculation method other than allowed under the Act.
- D. For purposes of this Section, "gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the provider from subscribers for the provision of video service by the video service provider within the jurisdiction of the franchising entity.
 - 1. **Gross revenues shall include all of the following:**
 - i. All charges and fees paid by subscribers for the provision of video service, including equipment rental, late fees, insufficient funds fees, fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated, with services other than video service.
 - ii. Any franchise fee imposed on the Provider that is passed on to subscribers.
 - iii. Compensation received by the Provider for promotion or exhibition of any products or services over the video service.
 - iv. Revenue received by the Provider as compensation for carriage of video programming on that Provider's video service.
 - v. All revenue derived from compensation arrangements for advertising to the local franchise area.
 - vi. Any advertising commissions paid to an affiliated third party for video service advertising.
 - 2. **Gross revenues do not include any of the following:**
 - i. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt.

- ii. Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset by subdivision (D)(i) and to the extent the refund, rebate, credit, or discount is attributable to the video service.
 - iii. Any revenues received by the Provider or its affiliates from the provision of services or capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionality integrated, with video service.
 - iv. Any revenues received by the Provider or its affiliates for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.
 - v. Any amounts attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge.
 - vi. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes.
 - vii. Any forgone revenue from the provision of video service at no charge to any person, except that any forgone revenue exchanged for trades, barter, services, or other items of value shall be included in gross revenue.
 - viii. Sales of capital assets or surplus equipment.
 - ix. Reimbursement by programmers of marketing costs actually incurred by the Provider for the introduction of new programming.
 - x. The sale of video service for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect to the service.
- E.** In the case of a video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the video Provider's revenue attributable to the other services, capabilities, or applications shall be included in gross revenue unless the Provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- F.** Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate has the effect of evading the payment of franchise fees which would otherwise be paid for video service.
- G.** The Provider is entitled to a credit applied toward the fees due under **Section 6(1) of the Act** for all funds allocated to the Franchising Entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under **Section 8 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act)**, 2002 PA 48, MCL 484.3108. The credits shall be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the Franchising Entity receives its allocation of funds. The credit allowed under this subsection shall be calculated by multiplying the number of linear feet occupied by the Provider in the public rights-of-way of the Franchising Entity by the lesser of 5 cents or the amount assessed under the **METRO Act**. The Provider is not eligible for a credit under this section unless the provider has taken all property tax credits allowed under the **METRO Act**.
- H.** All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
- I.** Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.
- J.** The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under **Section 6(1) of the Act**, applied against the amount of the subscriber's monthly bill.
- K.** The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

VII. Public, Education, and Government (PEG) Channels

- A.** The video service Provider shall designate a sufficient amount of capacity on its network to provide for the same number of public, education, and government access channels that are in actual use on the incumbent video provider system on the **effective date of the Act** or as provided under **Section 4(14) of the Act**.
- B.** Any public, education, or government channel provided under this section that is not utilized by the Franchising Entity for at least 8 hours per day for 3 consecutive months may no longer be made available to the Franchising Entity and may be programmed at the Provider's discretion. At such a time as the

Franchising Entity can certify a schedule for at least 8 hours of daily programming for a period of 3 consecutive months, the Provider shall restore the previously reallocated channel.

- C. The Franchising Entity shall ensure that all transmissions, content, or programming to be retransmitted by a video service Provider is provided in a manner or form that is capable of being accepted and retransmitted by a Provider, without requirement for additional alteration or change in the content by the Provider, over the particular network of the Provider, which is compatible with the technology or protocol utilized by the Provider to deliver services.
- D. The person producing the broadcast is solely responsible for all content provided over designated public, education, or government channels. The video service Provider *shall not* exercise any editorial control over any programming on any channel designed for public, education, or government use.
- E. The video service Provider is not subject to any civil or criminal liability for any program carried on any channel designated for public, education, or government use.
- F. If a Franchising Entity seeks to utilize capacity pursuant to **Section 4(1) of the Act** or an agreement under **Section 13 of the Act** to provide access to video programming over one or more PEG channels, the Franchising Entity shall give the Provider a written request specifying the number of channels in actual use on the incumbent video provider's system or specified in the agreement entered into under **Section 13 of the Act**. The video service Provider shall have 90 days to begin providing access as requested by the Franchising Entity. The number and designation of PEG access channels shall be set forth in an addendum to this agreement effective 90 days after the request is submitted by the Franchising Entity.
- G. A PEG channel shall only be used for noncommercial purposes.

VIII. PEG Fees

- A. The video service Provider shall also pay to the Franchising Entity as support for the cost of PEG access facilities and services an annual fee equal to one of the following options:
 - 1. If there is an existing Franchise on the effective date of the Act, the fee (enter the fee amount _____) paid to the Franchising Entity by the incumbent video Provider with the largest number of cable service subscribers in the Franchising Entity as determined by the existing Franchise Agreement;
 - 2. At the expiration of the existing Franchise Agreement, the amount required under (1) above, which is _____% of gross revenues. (The amount under (1) above is not to exceed 2% of gross revenues);
 - 3. If there is no existing Franchise Agreement, a percentage of gross revenues as established by the Franchising Entity and to be determined by a community need assessment, is _____% of gross revenues. (The percentage that is established by the Franchising Entity is not to exceed 2% of gross revenues.); and
 - 4. An amount agreed to by the Franchising Entity and the video service Provider.
- B. The fee required by this section shall be applicable to all providers, pursuant to Section 6(9) of the Act.
- C. The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.
- D. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
- E. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.
- F. The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under **Section 6(8) of the Act**, applied against the amount of the subscriber's monthly bill.
- G. The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

IX. Audits

- A. No more than every 24 months, a Franchising Entity may perform reasonable audits of the video service Provider's calculation of the fees paid under **Section 6 of the Act** to the Franchising Entity during the preceding 24-month period only. All records reasonably necessary for the audits shall be made available by the Provider at the location where the records are kept in the ordinary course of business. The Franchising Entity and the video service Provider shall each be responsible for their respective costs of the audit. Any additional amount due verified by the Franchising Entity shall be paid by the Provider within 30 days of the Franchising Entity's submission of invoice for the sum. If the sum exceeds 5% of the total fees which the

audit determines should have been paid for the 24-month period, the Provider shall pay the Franchising Entity's reasonable costs of the audit.

- B.** Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the provider shall be made within 3 years from the date the compensation is remitted.

X. Termination and Modification

This Franchise Agreement issued by a Franchising Entity may be terminated or the video service area footprint may be modified, except as provided under **Section 9 of the Act**, by the Provider by submitting notice to the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XI. Transferability

This Franchise Agreement issued by a Franchising Entity or an existing franchise of an incumbent video service Provider is fully transferable to any successor in interest to the Provider to which it is initially granted. A notice of transfer shall be filed with the Franchising Entity within 15 days of the completion of the transfer. The Provider will use Attachment 2, when notifying the Franchising Entity. The successor in interest will assume the rights and responsibilities of the original provider and will also be required to complete their portion of the Transfer Agreement located within Attachment 2.

XII. Change of Information

If any of the information contained in the Franchise Agreement changes, the Provider shall timely notify the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XIII. Confidentiality

Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and MUST BE KEPT CONFIDENTIAL.

- A. The Provider may specify which items of information should be deemed “confidential.” It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:
“[insert PROVIDER’S NAME]
[CONFIDENTIAL INFORMATION]”
- B. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.
- C. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

XIV. Complaints/Customer Service

- A. The Provider shall establish a dispute resolution process for its customers. Provider shall maintain a local or toll-free telephone number for customer service contact.
- B. The Provider shall be subjected to the penalties, as described under **Section 14 of the Act**, and the Franchising Entity and Provider may be subjected to the dispute process as described in **Section 10 of the Act**.
- C. Each Provider shall annually notify its customers of the dispute resolution process required under **Section 10 of the Act**. Each Provider shall include the dispute resolution process on its website.
- D. Before a customer may file a complaint with the Commission under **Section 10(5) of the Act**, the customer shall first attempt to resolve the dispute through the dispute resolution process established by the Provider in **Section 10(2) of the Act**.
- E. A complaint between a customer and a Provider shall be handled by the Commission pursuant to the process as described in **Section 10(5) of the Act**.
- F. A complaint between a Provider and a franchising entity or between two or more Providers shall be handled by the Commission pursuant to the process described in **Section 10(6) of the Act**.
- G. In connection with providing video services to the subscribers, a provider shall not do any act prohibited by Section 10(1)(a-f) of the Act. The Commission may enforce compliance to the extent that the activities are not covered by **Section 2(3)(l) in the Act**.

XV. Notices

Any notices to be given under this Franchise Agreement shall be in writing and delivered to a Party personally, by facsimile or by certified, registered, or first-class mail, with postage prepaid and return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

If to the Franchising Entity:

(must provide street address)

If to the Provider:

(must provide street address)

City of Berkley:

City of Berkley

3338 Coolidge Hwy

Berkley, MI 48072

Attn: Daniel Terbrack, Mayor

Fax No.:

WideOpenWest Michigan, LLC

32650 North Avis Dr.

Madison Heights, MI 48071

Attn: Terrell Priester

Fax No.: 248-677-9021

Or such other addresses or facsimile numbers as the Parties may designate by written notice from time to time.

XVI. Miscellaneous

- A.** Governing Law. This Franchise Agreement shall be governed by, and construed in accordance with, applicable Federal laws and laws of the State of Michigan.
- B.** The parties to this Franchise Agreement are subject to all valid and enforceable provisions of the Act.
- C.** Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute on and the same agreement.
- D.** Power to Enter. Each Party hereby warrants to the other Party that it has the requisite power and authority to enter into this Franchise Agreement and to perform according to the terms hereof.
- E.** The Provider and Franchising Entity are subject to the provisions of 2006 Public Act 480.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Franchise Agreement.

City of Berkley, a Michigan Municipal Corporation

WideOpenWest Michigan, LLC, a Delaware corporation doing business as WOW! Cable Internet Phone

By

Daniel Terbrack

Print Name

Mayor

Title

3338 Coolidge Hwy

Address

Berkley, MI 48072

City, State, Zip

248-658-3350

Phone

Fax

dterbrack@berkleymich.net

By

Terrell Priester

Print Name

Senior Director of Operations

Title

32650 North Avis Dr.

Address

Madison Heights, MI 48071

City, State, Zip

248-677-9080

Phone

248-677-9021

Fax

terrell.priester@wowinc.com

Email

FRANCHISE AGREEMENT *(Franchising Entity to Complete)*

Date submitted:

Date completed and approved:

ATTACHMENT 1

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT
(Pursuant To 2006 Public Act 480)
(Form must be typed)

Date: June 29, 2022		
Applicant's Name: WideOpenWest Michigan, LLC d/b/a WOW! Internet Cable Phone		
Address 1: 32650 North Avis Dr.		
Address 2:		Phone: 248-677-9080
City: Madison Heights	State: MI	Zip: 48071
Federal I.D. No. (FEIN): 04-3561701		

Company executive officers:

Name(s): Teresa Elder, Henry Hryckiewicz, Shannon Campain, Don Schena, Bill Case, David Burnick & John Rego
Title(s): CEO,CTO, CCO, CXO, CIO,CHRO & CFO

Person(s) authorized to represent the company before the Franchising Entity and the Commission:

Name: Terrell Priester		
Title: Senior Director of Operations		
Address: 32650 North Avis Dr.; Madison Heights, MI 48071		
Phone: 248-677-9080	Fax: 248-677-9021	Email: terrell.priester@wowinc.com

Describe the video service area footprint as set forth in Section 2(3e) of the Act. (An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.)

Refer to the set of area system prints provided in this package.

[**Option A:** for Providers that Options B and C are not applicable, a description based on a geographic information system digital boundary meeting or exceeding national map accuracy standards]

[**Option B:** for Providers with 1,000,000 or more access lines in Michigan using telecommunication facilities to provide Video Service, a description based on entire wire centers or exchanges located in the Franchising Entity]

[**Option C:** for an Incumbent Video Service Provider, it satisfies this requirement by allowing the Franchising Entity to seek right-of-way information comparable to that required by a permit under the METRO Act as set forth in its last cable franchise or consent agreement from the Franchising Entity entered into before the effective date of the Act]

Pursuant to Section 2(3)(d) of the Act, if the Provider is not an incumbent video Provider, provide the date on which the Provider expects to provide video services in the area identified under Section 2(3)(e) (the Video Service Area Footprint).

Date:

For All Applications:

***Verification
(Provider)***

I, Terrell Priester, of lawful age, and being first duly sworn, now states: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

Name and Title (printed): Terrell Priester, Senior Director of Operations

Signature:

Date:

(Franchising Entity)

City of Berkley, a Michigan municipal corporation

By

Daniel Terbrack

Print Name

Mayor

Title

3338 Coolidge Hwy

Address

Berkley, MI 48072

City, State, Zip

248-658-3350

Phone

Fax

dterbrack@berkleymich.net

Email

Date

ATTACHMENT 2

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT (Pursuant to 2006 Public Act 480) (Form must be typed)

Affected Franchise Agreement(s):

Date:

Type of Change (*Check one*): ☐ Amended ☐ Termination ☐ Transfer

Current information on record:

Applicant's Name:		
Address 1:		
Address 2:		Phone:
City:	State:	Zip:
Federal I.D. No. (FEIN):		

For Amended Agreement(s):

Agreement that is being Amended:

Types of Amendments:

A. Change in Legal Name or assume business name, etc: (*Approval from Secretary of State must be attached.*)

1. Existing Name:
2. New Name:

B. Change in Principal Business Address or Name of Person Authorized to Receive Notice:

1. New Principal/business office address:

Address 1:	
Address 2:	
City, State, Zip:	
Email:	
Phone:	Fax:

2. New Name and Title of person authorized to receive notice:

Name:	Title:
Address 1:	
Address 2:	
City, State, Zip:	
Email:	

Phone:	Fax:
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C. Increase/Decrease in the Territory:

1. <u>Reason for the change:</u>
2. <u>Description of change:</u>
3. <u>List the new unit(s) and unincorporated area(s) to be served under this change:</u>

D. Additional changes (please attach any additional changes that have been made, which have not been previously recorded in this Attachment):

For Termination:

Effective date of Termination:
Agreement associated with the Termination:
Identify the number of customers covered by the Agreement being terminated:
Identify the method used to notify the Franchising Entity of the termination of service (Attach a copy of the notification):

For Transfer of Agreement(s):

(A transfer will require the new franchise holder or new controlling parent company to complete the information for the "New Agreement Holder")

Name of Current Franchise Holder:
Contact Name:
Address 1:
Address 2:
City, State, Zip:
Email:

Phone:	Fax:
Federal I.D. No. (FEIN):	

ATTACHMENT 2

Name of New Franchise Holder or controlling parent company as applicable:	
Contact Name:	
Address 1:	
Address 2:	
City, State, Zip:	
Email:	
Phone:	Fax:
Federal I.D. No. (FEIN):	
Email:	

Company executive officers:

Name(s):
Title(s):
Person(s) authorized to represent the company before the Franchising Entity and the Commission:

Describe the video service area footprint as set forth in Section 2(3)(e) of the Act. (An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.)

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[Option A, for Providers that Options B and C are not applicable, a description based on a geographic information system digital boundary meeting or exceeding national map accuracy standards]

[Option B, for Providers with 1,000,000 or more access lines in Michigan using telecommunication facilities to provide Video Service, a description based on entire wire centers or exchanges located in the Franchising Entity]

[Option C, for an Incumbent Video Service Provider, it satisfies this requirement by allowing the Franchising Entity to seek right-of-way information comparable to that required by a permit under the METRO Act as set forth in its last cable franchise or consent agreement from the Franchising Entity entered into before the effective date of the Act]]

Explain the transaction that defines the transferee as a successor in interest (Attachments are acceptable):

--

Effective date of Transfer:

(Per 2006 Public Act 480: A notice of transfer shall be filed with the Franchising Entity within 15 days of the completion of the transfer)

Agreement associated with the Transfer:

For All Applications:

**Verification
(Provider)**

I, [insert NAME], of lawful age, and being first duly sworn, now state: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

Name and Title (printed):	
Signature:	Date:

(Franchising Entity)

Township of [Northville], a Michigan municipal corporation

By
Print Name
Title
Address
City, State, Zip
Phone
Fax
Email

Date

2

ATTACHMENT

ATTACHMENT 3

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT (Form must be typed)

THE UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT ("Agreement") is considered completed and approved on this date August 22, 2022, pursuant to 2006 PA 480, Section 3(3) between **City of Berkley**, a Michigan municipal corporation (the "Franchising Entity"), and WideOpenWest Michigan, LLC, a Delaware corporation doing business as WOW! Internet Cable Phone.

Pursuant to Section 3(3) of the Act, "A Franchising Entity shall have 30 days after the submission date of a complete franchise agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the franchise agreement or approve the franchise agreement within the time periods required under this subsection, the franchise agreement shall be considered complete and the franchise agreement approved."

The Uniform Video Service Local Franchise Agreement was first filed on June 29, 2022, and has exceeded the 30 day submission date (pursuant to Section 3(3) of the Act) on August 22, 2022. Attachment 3 is being sent as a notification of a Franchise Agreement that is considered completed and approved to both City of Berkley, a Michigan municipal corporation (the "Franchising Entity"), as well as the **Michigan Public Service Commission**.

(Provider)

I, Terrell Priester, of lawful age, and being first duly sworn, now states: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

Name and Title (printed): Terrell Priester, Senior Director of Operations	
Signature:	Date: