

Southgate City Council Agenda

Council Chambers

14400 Dix-Toledo Rd., Southgate, Michigan 48195

Wednesday December 16, 2020

WEB MEETING @ <https://us02web.zoom.us/j/85038292734>

CALL-IN @ + 1-312-626-6799 Passcode: 85038292734

6:30pm Work Study Session

1. Officials Reports
2. Discussion of Agenda Items

7:00 pm Regular Meeting

Pledge of Allegiance

Roll Call: Colovos, Farrah, George, Graziani, Rauch, Rollet, Zamecki.

Minutes:

1. Work Study Session Minutes dated December 16, 2020.
2. Regular City Council Meeting Minutes dated December 16, 2020.

Scheduled Persons in the Audience:

Consideration of Bids:

Scheduled Hearings:

Communications *A* –

- | | |
|---|----------|
| 1. Memo from Administrator; Re: Resolutions Regarding Local State of Emergency | Page 6 |
| 2. Memo from Police Chief; Re: Waiver of Bid /Purchase approval – Body Worn Cameras | Page 15 |
| 3. Letter from Mayor; Re: Bid Extension – Cross Connection Control Program | Page 24 |
| 4. Memo from Administrator; Re: WOW Agreement | Page 38 |
| 5. Memo from Administrator; Re: Letter of Agreement with Mark Mydlarz | Page 55 |
| 6. Memo from Administrator; Re: Letter of Agreement with Joseph Marsh | Page 58 |
| 7. Memo from ACA/Finance Director; Re: Preliminary Review Application for Waiver and Plan Act 202 of 2017 | Page 61 |
| 8. Letter from Mayor; Re: Appointments to Downtown Development Authority | Page 173 |
| 9. Letter from Mayor; Re: Appointment to Compensation Commission | Page 174 |
| 10. Letter from Mayor; Re: Appointments to Board of Zoning Appeals | Page 175 |

Communications *B* – (Receive and File)

- | | |
|--|----------|
| 1. Letter from Mayor; Re: Appointments to Bldg. & Mech. Board of Appeals | Page 176 |
| 2. Letter from Mayor; Re: Appointments to CASE Commission | Page 177 |

Ordinances:

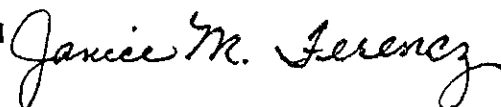
Old Business:

New Business:

Unscheduled Persons in the Audience:

Claims & Accounts: Warrant #1415 \$1,413,114.31

Adjournment:



Janice M. Ferencz, City Clerk

Southgate City Council

2021 Meeting Schedule

*Meetings are held at 7:00 P.M. in the Municipal Council Chambers
14400 Dix-Toledo Highway, Southgate, Michigan*

MEETING DATES

January 6th and 20th

February 3rd and 17th

March 3rd and 17th

April 7th and 21st

May 5th and 19th

June 2nd and 16th

July 7th and 21st

August 4th and 18th

September 1st and 15th

October 6th and 20th

November 3rd and 17th

December 1st and 15th

City Council

Work Study Session

December 2, 2020

An Informal Meeting of the Council of the City of Southgate was held on December 2, 2020 at 6:30 P.M. *(Due to the Covid-19 virus, this meeting was via Zoom in accordance with Governor Whitmer's executive order).*

Present: Bill Colovos, Mark Farrah, Karen George, John Graziani, Phil Rauch, Chris Rollet

Absent: Dale Zamecki, (excused)

Also Present: Mayor Joseph G. Kuspa, City Attorney Brandon Fournier, Assistant City Administrator/Finance Director David Angileri, City Clerk Janice Ferencz, City Engineer John Hennessey, Public Safety Director Jeff Smith, Police Chief Joe Marsh, Fire Chief Marc Hatfield, Acting DPS Director Kevin Anderson, Building Inspections Director Bob Casanova and Parks & Recreation Director Julie Goddard.

Discussed the following agenda items:

- 2018 International Fire Code
- Audit FY 2019/2020
- Ordinance for Biological Material Depository

Bill Brickey and Tom Kempa gave a highlighted presentation of the FY 2019/2020 annual audit.

This meeting ended at 6:58 pm.

City of Southgate

Regular City Council Meeting

December 2, 2020

A Regular Meeting of the Council of the City of Southgate was held on Wednesday, December 2, 2020 and was called to order at 7:00 PM by Council President John Graziani. **(DUE TO COVID-19 VIRUS, THIS MEETING WAS HELD VIA ZOOM, IN ACCORDANCE WITH GOVERNOR WHITMER'S EXECUTIVE ORDER)**

This meeting began with the Pledge of Allegiance, followed by roll call.

Present: Bill Colovos, Mark Farrah, Karen George, John Graziani, Phil Rauch, Chris Rollet

Absent: Dale Zamecki (excused)

Also Present: Mayor Joseph G. Kuspa, City Attorney Brandon Fournier, Assistant City Administrator/Finance Director David Angileri, City Clerk Janice Ferencz, City Engineer John Hennessey, Public Safety Director Jeff Smith, Police Chief Joe Marsh, Fire Chief Marc Hatfield, Acting DPS Director Kevin Anderson, Building Inspections Director Bob Casanova and Parks & Recreation Director Julie Goddard.

Minutes:

Moved by Colovos, supported Rollet, RESOLVED, that the minutes of the City Council Work Study Session dated November 18, 2020 be approved as presented. Carried unanimously.

Moved by George, supported by Rauch, RESOLVED, that the minutes of the Regular City Council Meeting dated November 18, 2020 be approved as presented. Carried unanimously.

Communications "A":

1. Memo from ACA/Finance Director; Re: Audit FY 2019/2020 moved by Farrah, supported by Rollet, RESOLVED THAT the Southgate City Council hereby accepts and approves the Audit for FY 2019/2020. BE IT FURTHER RESOLVED THAT due to GASB #54 (Fund Balance Reporting and Governmental Fund Type Definitions) the fund balance is restated as follows:

General Fund

Nonspendable Prepays	\$ 9,416
Restricted	
Unspent property tax – Rubbish	\$ 43,960
Unspent property tax – P&F Pension	\$ 43,830
Low income housing	\$ 9,163
Recreation	\$ 0
Building Dept.	\$ 281,251
Committed	
County Property Tax Chargeback's	\$ 300,000
Computer Software Acquisition	\$ 10,000
SINC	\$ 136,000
Assigned	
Workers Compensation	\$ 330,000
Severance Reserve	\$ 900,000
Future Working Capital	\$ 300,000
Future OPEB	\$ 200,000

Regular City Council Meeting December 2, 2020

Capital Projects Funds

Committed	Police Cars	\$ 438,567
	Property Acquisition	\$ 115,116
	Fire Rescue Equipment	\$ 160,000
Assigned	Capital Projects	\$ 248,767

Motion carried unanimously.

Ordinances:

1. Memo from Administrator; Re: Ordinance Amendment – "Biological Material Depository" Moved by George supported by Colovos, RESOLVED THAT the Southgate City Council hereby waives the first reading and gives the second reading to adoption of an ordinance to add Section 1260.07 (104) "Biological Material Depository" to the City of Southgate Codified Ordinances, Southgate, MI. BE IT OTHERWISE RESOLVED THAT said ordinance be known as Ordinance no. 1013.

Motion carried unanimously.

2. Memo from Administrator; Re: Ordinance Adoption – 2018 International Fire Code Moved by George supported by Rauch, RESOLVED THAT the Southgate City Council hereby waives the first reading and gives the second reading to adoption of an ordinance to amend Section 1610.02 by incorporating the 2018 International Fire Code. BE IT OTHERWISE RESOLVED THAT said ordinance be known as Ordinance no. 1014.

Motion carried unanimously.

Claims and Accounts:

Moved by Farrah, supported by Rollet, RESOLVED, that Claims and Accounts be paid as outlined on Warrant #1414 in the amount of \$1,294,253.86.

Motion carried unanimously.

Adjournment:

Moved by Colovos, supported by George, RESOLVED THAT this Regular Meeting of the Southgate City Council be adjourned at 7:09 P.M. Carried unanimously.

John Graziani
Council President

Janice M. Ferencz
City Clerk

JOSEPH G. KUSPA
Mayor

JANICE M. FERENCZ
City Clerk

JAMES E. DALLOS
Treasurer



City of Southgate

- CITY COUNCIL -

JOHN CRAZIANI
Council President

MARK FARRAH

KAREN E. GEORGE

BILL COLOVOS

DALE W. ZAMECKI

PHILLIP J. RAUCH

CHRISTOPHER P. ROLLET

Memorandum

To: Honorable City Council Members

From: Dustin Lent, City Administrator

Date: December, 11 2020

Re: Resolution to declare a Local State of Emergency and a Resolution for Policies and Procedures for Virtual and Hybrid Meetings.

City of Southgate is taking proactive steps in the continued fight against the covid-19 pandemic. This virus has not only challenged our resident's health, but also the economic impact on our businesses and fellow residents. Administration is asking for a resolution to adopt a local State of Emergency through March 31st, 2021. To protect the health and safety of City residents and employees and to create reasonable flexibility to react and take action in regards to Michigan's Open Meetings Act, Southgate Permits, Fees and Ordinances.; Administration is also asking for a resolution for Policies and procedure for virtual and Hybrid Meetings.

This action allows for us to more adequately address the challenges that our residents, employees and business community face as we move into next chapter of this pandemic.

The City Attorney has reviewed both resolutions and has no objection to their adoption. Therefore I respectfully request City Council to authorize the Mayor and Clerk to sign on behalf of the City.

Please do not hesitate to contact me with any additional questions.

Your favorable consideration of this matter is requested.

**CITY OF SOUTHGATE
WAYNE COUNTY, MICHIGAN**

RESOLUTION

POLICIES AND PROCEDURES FOR VIRTUAL AND HYBRID MEETINGS

WHEREAS, On October 23, 2020, Governor Gretchen Whitmer signed Senate Bill 1108 into law. This bill allows for remote meetings for any reason through December 31, 2020. Between January 1, 2021 and December 31, 2021, remote meetings and hybrid meeting are allowed under specific circumstances as outlined in SB 1108; and

WHEREAS, Michigan's Open Meetings Act, MCL 15.261 et seq., took effect in 1977, part of a nationwide movement to guaranteed public access to government, particularly public policy decisions, to promote a better informed citizenry; and

WHEREAS, the OMA was amended by adding section 3a. to include the following:

- Require a public body to establish procedures to accommodate the absence of a member due to a medical condition or a statewide or locally declared state of emergency that would risk the health and safety of members or the public;
- Allow a meeting of a public body to be held electronically and specify that a meeting held in that manner would be subject to the same requirements as an in-person meeting;
- Require an electronically held meeting to be conducted in a manner that permitted two way communication between members and participants;
- Prescribe notice requirements for meetings held electronically;
- Prohibit a public body from requiring a person to register or provide his or her name as a condition of participating in an electronic meeting; and
- Require members of the public to be excluded from participating in a closed session of a public body held electronically, if that session complied with the Act; and

RESOLVED, that in accordance with the amendment to the OMA, the City of Southgate adopts the following procedures:

- While under a local state of the emergency, the City of Southgate will hold virtual and /or hybrid meetings of the City Council and City Boards and Commissions.
- For each meeting, the City will utilize Zoom to allow for two-way communications.
- All discussion and deliberation during the virtual meeting shall be done in public. Members are prohibited from other means of communication to discuss issues during the meeting (texting, email, etc.)

- The City will continue to post all meetings 18 hours in advance and the Zoom information will be posted and available to the public for their participation.
- As with past practice, the public will have an opportunity for public participation. The public will need to be recognized by the Council President and may be limited to three minutes. The public will need to identify themselves with their name and address.
- During the course of all virtual meetings, the public will conduct itself appropriately so as not to rise to the level of being disorderly or disruptive. Any person speaking out of turn, using foul language, or otherwise being disorderly or disruptive will be ruled out of order and not permitted to participate.

IT IS FURTHER RESOLVED, that the City of Southgate adopts the policies and procedures contained in this resolution for all virtual and hybrid meetings of the City Council and the various boards and commissions. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution, be and the same are hereby rescinded.

Moved: _____

Seconded: _____

AYES: _____

NAYS _____ ABSENT: _____

CERTIFICATION

STATE OF MICHIGAN)

) ss.

COUNTY OF WAYNE)

I, _____, the duly qualified Clerk of the City of Southgate, Wayne County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Resolution adopted by the Southgate City Council, on the ____ day of December 2020, the original copy will be kept on file in the City of Southgate Clerk's Office.

Southgate City Clerk

CITY OF SOUTHGATE
CITY COUNCIL RESOLUTION
TO DECLARE "LIMITED STATE OF EMERGENCY"

WHEREAS, the City of Southgate (the "City") is continuing to take proactive steps to mitigate the spread of the novel coronavirus (COVID-19);

WHEREAS, the spread and recovery of COVID-19 falls within definitions of the Emergency Management Act of 1976, Act 390 of 1976, represents an occurrence or threat of widespread or severe damage, injury or loss of life;

WHEREAS, as a result of this ongoing situation and the impact to Southgate's residents and City employees, the City believes it is necessary to authorize the City Mayor or his designee to take steps to protect the health and safety of City residents and employees and to create reasonable flexibility to react and take action in regards to Michigan's Open Meetings Act, Southgate Permits, Fees and Ordinances.;

WHEREAS, it has become necessary based upon the above stated conditions for the City Council to declare by this Resolution a "State of Emergency" as authorized under Section 10 of Act 390, P.A. 1976 and grant the Mayor or his designee the emergency powers and authority provided therein; including: authority to suspend work with or not enforce any or all City Ordinances, regulations, policies, or practices adverse to the health and safety of residents; authority to suspend any activity, program, meeting or service with or without notice; authority to schedule, reschedule, restrict and/or cancel, with or without notice, any meeting of any Commission, or Sub-Committee, including any or all Planning Commission, Board of Zoning Appeals or other City meeting and to otherwise restrict or impose reasonable safeguards for all approved meetings under Senate Bill 1108; authority to terminate or suspend any and alter any permits, licenses, or fees, authority to permit restaurants/banquet facilities and personal service stations to temporarily expand their dining and service areas to outside an establishment due to the hardships imposed by the COVID-19 pandemic.

NOW THEREFORE BE IT RESOLVED, by passage of this Resolution the Southgate City Council, in accordance with Section 10 of Act 390, P.A. 1976, as amended, hereby declares that a "State of Emergency" exists within our jurisdiction as of July 1st, 2020, and that the Mayor, his designee, are hereby granted the above temporary authority and as otherwise provided by statute through March 31st, 2021;

BE IT FURTHER RESOLVED, a certified copy of this resolution will be forwarded by LEIN or facsimile to the Commanding Officer of the Emergency Management Division, Department of State Police (LEIN code: ELES), MSP Special Operations Division (LEIN code: ELOP), and the appropriate EMO District Coordinator, pursuant to Section 10 of Act 390, P.A. 1976, as amended.

Moved: _____

Seconded: _____

AYES: _____

NAYS _____ ABSENT: _____

RESOLUTION DECLARED ADOPTED THIS ____ DAY OF DECEMBER 2020

CERTIFICATION

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, _____, the duly qualified Clerk of the City of Southgate, Wayne County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Resolution adopted by the Southgate City Council, on the ____ day of December 2020, the original copy will be kept on file in the City of Southgate Clerk's Office.

Southgate City Clerk

Act No. 228
Public Acts of 2020
Approved by the Governor
October 16, 2020
Filed with the Secretary of State
October 16, 2020
EFFECTIVE DATE: October 16, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senators Theis, Hollier, LaSata, MacDonald, Lucido, Victory, Daley, Zorn, Wojno,
McMorrow, Moss and Schmidt

ENROLLED SENATE BILL No. 1108

AN ACT to amend 1976 PA 267, entitled "An act to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts," by amending section 3 (MCL 15.263), as amended by 2018 PA 485, and by adding section 3a.

The People of the State of Michigan enact:

Sec. 3. (1) All meetings of a public body must be open to the public and must be held in a place available to the general public. All persons must be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right does not depend on the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

(2) All decisions of a public body must be made at a meeting open to the public. For purposes of any meeting subject to this section, except a meeting of any state legislative body at which a formal vote is taken, the public body shall, subject to section 3a, establish the following procedures to accommodate the absence of any member of the public body due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster declared pursuant to law or charter by the governor or a local official or local governing body that would risk the personal health or safety of members of the public or the public body if the meeting were held in person:

(a) Procedures by which the absent member may participate in, and vote on, business before the public body, including, but not limited to, procedures that provide for both of the following:

(i) Two-way communication.

(ii) For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending the meeting remotely. If the member is attending the meeting remotely for a purpose other than for military duty, the member's announcement must further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she is attending the meeting remotely.

(b) Procedures by which the public is provided notice of the absence of the member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that will come before the public body.

(3) All deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public except as provided in this section and sections 7 and 8.

(4) A person must not be required as a condition of attendance at a meeting of a public body to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person must be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person must not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

(7) This act does not apply to the following public bodies, but only when deliberating the merits of a case:

(a) The Michigan compensation appellate commission operating as described in either of the following:

(i) Section 274 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.274.

(ii) Section 34 of the Michigan employment security act, 1936 (Ex Sess) PA 1, 421.34.

(b) The state tenure commission created in section 1 of article VII of 1937 (Ex Sess) PA 4, MCL 38.131, when acting as a board of review from the decision of a controlling board.

(c) The employment relations commission or an arbitrator or arbitration panel created or appointed under 1939 PA 176, MCL 423.1 to 423.30.

(d) The Michigan public service commission created under 1939 PA 3, MCL 460.1 to 460.11.

(8) This act does not apply to an association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

(9) This act does not apply to a committee of a public body that adopts a nonpolicymaking resolution of tribute or memorial, if the resolution is not adopted at a meeting.

(10) This act does not apply to a meeting that is a social or chance gathering or conference not designed to avoid this act.

(11) This act does not apply to the Michigan veterans' trust fund board of trustees or a county or district committee created under 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610, when the board of trustees or county or district committee is deliberating the merits of an emergent need. A decision of the board of trustees or county or district committee made under this subsection must be reconsidered by the board or committee at its next regular or special meeting consistent with the requirements of this act. "Emergent need" means a situation that the board of trustees, by rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, determines requires immediate action.

(12) As used in subsection (2):

(a) "Formal vote" means a vote on a bill, amendment, resolution, motion, proposal, recommendation, or any other measure on which a vote by members of a state legislative body is required and by which the state legislative body effectuates or formulates public policy.

(b) "Medical condition" means an illness, injury, disability, or other health-related condition.

Sec. 3a. (1) A meeting of a public body held, in whole or in part, electronically by telephonic or video conferencing in compliance with this section and, except as otherwise required in this section, all of the provisions of this act applicable to a nonelectronic meeting, is permitted by this act in the following circumstances:

(a) Before January 1, 2021 and retroactive to March 18, 2020, any circumstances, including, but not limited to, any of the circumstances requiring accommodation of absent members described in section 3(2).

(b) On and after January 1, 2021 through December 31, 2021, only those circumstances requiring accommodation of members absent due to military duty, a medical condition, or a statewide or local state of emergency or state of disaster as described in section 3(2). For the purpose of permitting an electronic meeting due to a local state of emergency or state of disaster, this subdivision applies only as follows:

- (i) To permit the electronic attendance of a member of the public body who resides in the affected area.
- (ii) To permit the electronic meeting of a public body that usually holds its meetings in the affected area.

(c) After December 31, 2021, only in the circumstances requiring accommodation of members absent due to military duty as described in section 3(2).

(2) A meeting of a public body held electronically under this section must be conducted in a manner that permits 2-way communication so that members of the public body can hear and be heard by other members of the public body, and so that public participants can hear members of the public body and can be heard by members of the public body and other participants during a public comment period. A public body may use technology to facilitate typed public comments during the meeting submitted by members of the public participating in the meeting that may be read to or shared with members of the public body and other participants to satisfy the requirement under this subsection that members of the public be heard by others during the electronic meeting and the requirement under section 3(5) that members of the public be permitted to address the electronic meeting.

(3) Except as otherwise provided in subsection (8), a physical place is not required for an electronic meeting held under this section, and members of a public body and members of the public participating electronically in a meeting held under this section that occurs in a physical place are to be considered present and in attendance at the meeting for all purposes.

(4) If a public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, in addition to any other notices that may be required under this act, post advance notice of a meeting held electronically under this section on a portion of the public body's website that is fully accessible to the public. The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled or electronic public meetings that is accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of nonregularly scheduled or electronic public meetings. Subject to the requirements of this section, any scheduled meeting of a public body may be held as an electronic meeting under this section if a notice consistent with this section is posted at least 18 hours before the meeting begins. Notice of a meeting of a public body held electronically must clearly explain all of the following:

- (a) Why the public body is meeting electronically.
- (b) How members of the public may participate in the meeting electronically. If a telephone number, internet address, or both are needed to participate, that information must be provided specifically.
- (c) How members of the public may contact members of the public body to provide input or ask questions on any business that will come before the public body at the meeting.
- (d) How persons with disabilities may participate in the meeting.

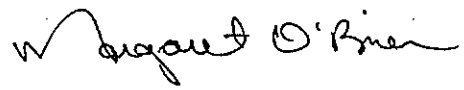
(5) Beginning on the effective date of the amendatory act that added this section, if an agenda exists for an electronic meeting held under this section by a public body that directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, the public body shall, on a portion of the website that is fully accessible to the public, make the agenda available to the public at least 2 hours before the electronic meeting begins. This publication of the agenda does not prohibit subsequent amendment of the agenda at the meeting.

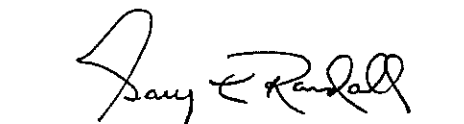
(6) A public body shall not, as a condition of participating in an electronic meeting of the public body held under this section, require a person to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attendance, other than mechanisms established and required by the public body necessary to permit the person to participate in a public comment period of the meeting.

(7) Members of the general public otherwise participating in a meeting of a public body held electronically under this section are to be excluded from participation in a closed session of the public body held electronically during that meeting if the closed session is convened and held in compliance with the requirements of this act applicable to a closed session.

(8) At a meeting held under this section that accommodates members absent due to military duty or a medical condition, only those members absent due to military duty or a medical condition may participate remotely. Any member who is not on military duty or does not have a medical condition must be physically present at the meeting to participate.

This act is ordered to take immediate effect.


Secretary of the Senate


Clerk of the House of Representatives

Approved _____

Governor

MEMO

To: Honorable Mayor Kuspa
From: Office of the Chief of Police
Re: Request for Waiver of bid/Purchase approval

Date: December 4th, 2020

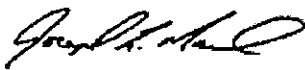
Dear Mayor,

The Police Department is looking to purchase Body Worn Camera's (BWC) for all sworn police officers. BWCs are intended to increase transparency, improve police encounters, enhance evidence pertaining to an officer encounter, and provide opportunities for improvement through officer training.

We received a quote for 42 BWC's from Axon Enterprises Inc., which is located at 17800 N. 85th St, Scottsdale, Arizona 85255. Axon is currently a vendor with whom we purchase our Taser equipment through and we have had a great working relationship with them and the services they've provided our department. The BWC program that we would like to enter with Axon would be a five year contract totaling \$212,929.70. This contract would provide us with 42 BWC's that would provide coverage for all department sworn officers. Additionally, the contract provides for data storage, an auto-tagging feature, charging stations, camera mounts, Evidence.com licensing, and a Technical Assurance Warranty Plan for all of the BWC's. The Assurance Plan would provide us with no cost replacement cameras at anytime if a BWC is damaged or not functioning properly. Additionally, the Assurance Plan would provide for a replacement of our BWC's at both 2 ½ and 5 years in the program.

It is my recommendation that we purchase BWC's from Axon Enterprises Inc in the amount of \$212,929.70. This would be a 5 year payment plan with our year one payment being \$72,867.74. Years 2-5 will have equal payment amounts of \$35,015.49. Year one of this purchase would be made utilizing Federal Forfeiture Funds. This purchase falls within the guidelines that govern the use of these funds. We will be applying for a BWC's federal grant when they open up again. There is no guarantee that we will be accepted for a grant. Therefore, it is our intention to budget for years 2-5 in our police department budget. Further, if adequate funding is available in our forfeiture accounts in years 2-5 we can utilize those funds if necessary. With your concurrence, I respectfully request this item be placed on the City Council's agenda for the meeting scheduled on December 16th, 2020 for the purposes of a waiver of bid request and purchase approval.

Sincerely,



Joseph L. Marsh
Chief of Police

cc: Finance Director, City Administrator, Public Safety Commission (7), file



AXON

Southgate Police Dept. - MI

AXON SALES REPRESENTATIVE

Robbie Taylor
(480) 502-6274
rtaylor@axon.com

ISSUED
12/1/2020

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page 16



Axon Enterprise, Inc.
17800 N 85th St
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

Q-269380-44166.778RT

Issued: 12/01/2020

Quote Expiration: 12/15/2020

Account Number: 110198

Payment Terms: Net 30

Delivery Method: Fedex - Ground

SHIP TO

Joseph Marsh
Southgate Police Dept. - MI
14710 REAUME PKWY.
SOUTHGATE, MI 48195
US

BILL TO

Southgate Police Dept. - MI
14710 REAUME PKWY.
SOUTHGATE, MI 48195
US

SALES REPRESENTATIVE

Robbie Taylor
Phone: (480) 502-6274
Email: rtaylor@axon.com
Fax:

PRIMARY CONTACT

Joseph Marsh
Phone: (734) 258-3060
Email: jmarsh@ci.southgate.mi.us

Year 1

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	35	0.00	0.00	0.00
73840	EVIDENCE.COM BASIC ACCESS LICENSE	60	35	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	30	0.00	0.00	0.00
73746	PROFESSIONAL EVIDENCE.COM LICENSE	60	10	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	500	0.00	0.00	0.00
73682	AUTO TAGGING LICENSE	60	42	0.00	0.00	0.00
Hardware						
73202	AXON BODY 3 - NA10		42	699.00	664.75	27,919.50
74210	AXON BODY 3 - 8 BAY DOCK		5	1,495.00	1,421.75	7,108.75
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK		5	43.90	41.75	208.75
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	42	336.00	319.54	13,420.68
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	5	354.00	336.65	1,683.25
74028	WING CLIP MOUNT, AXON RAPIDLOCK		47	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		42	0.00	0.00	0.00
Other						
73827	AB3 CAMERA TAP WARRANTY	60	42	0.00	0.00	0.00

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Protect life.

Year 1 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other (Continued)						
73828	AB3 8 BAY DOCK TAP WARRANTY	60	5	0.00	0.00	0.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	35	180.00	171.18	5,991.30
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	445.07	4,450.70
73831	10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT	12	500	4.80	4.56	2,280.00
73835	AUTO TAGGING LICENSE PAYMENT	12	42	180.00	171.18	7,189.56
71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK		5	0.00	0.00	0.00
Services						
85144	AXON STARTER		1	2,750.00	2,615.25	2,615.25
79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE		1	0.00	0.00	0.00
Subtotal						72,867.74
Estimated Shipping						0.00
Estimated Tax						0.00
Total						72,867.74

Spares

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
73202	AXON BODY 3 - NA10		1	699.00	0.00	0.00
74028	WING CLIP MOUNT, AXON RAPIDLOCK		1	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		1	0.00	0.00	0.00
Other						
73827	AB3 CAMERA TAP WARRANTY	60	1	0.00	0.00	0.00
Subtotal						0.00
Estimated Tax						0.00
Total						0.00

Year 2

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	42	336.00	319.54	13,420.68

Year 2 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware (Continued)						
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	5	354.00	336.65	1,683.25
Other						
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	35	180.00	171.18	5,991.30
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	445.07	4,450.70
73831	10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT	12	500	4.80	4.56	2,280.00
73835	AUTO TAGGING LICENSE PAYMENT	12	42	180.00	171.18	7,189.56
Subtotal						35,015.49
Estimated Tax						0.00
Total						35,015.49

Year 3

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	42	336.00	319.54	13,420.68
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	5	354.00	336.65	1,683.25
Other						
73309	AXON CAMERA REFRESH ONE		42	0.00	0.00	0.00
73689	MULTI-BAY BWC DOCK 1ST REFRESH		5	0.00	0.00	0.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	35	180.00	171.18	5,991.30
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	445.07	4,450.70
73831	10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT	12	500	4.80	4.56	2,280.00
73835	AUTO TAGGING LICENSE PAYMENT	12	42	180.00	171.18	7,189.56
Subtotal						35,015.49
Estimated Tax						0.00
Total						35,015.49

Year 4

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	42	336.00	319.54	13,420.68
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	5	354.00	336.65	1,683.25
Other						
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	35	180.00	171.18	5,991.30
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	445.07	4,450.70
73831	10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT	12	500	4.80	4.56	2,280.00
73835	AUTO TAGGING LICENSE PAYMENT	12	42	180.00	171.18	7,189.56
Subtotal						35,015.49
Estimated Tax						0.00
Total						35,015.49

Year 5

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	42	336.00	319.54	13,420.68
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	5	354.00	336.65	1,683.25
Other						
73310	AXON CAMERA REFRESH TWO		42	0.00	0.00	0.00
73688	MULTI-BAY BWC DOCK 2ND REFRESH		5	0.00	0.00	0.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	35	180.00	171.18	5,991.30
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	10	468.00	445.07	4,450.70
73831	10 GB EVIDENCE.COM A-LA-CART STORAGE PAYMENT	12	500	4.80	4.56	2,280.00

Year 5 (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other (Continued)						
73835	AUTO TAGGING LICENSE PAYMENT	12	42	180.00	171.18	7,189.56
Subtotal						35,015.49
Estimated Tax						0.00
Total						35,015.49
Grand Total						212,929.70



Discounts (USD)

Quote Expiration: 12/15/2020

List Amount	224,611.50
Discounts	11,681.80
Total	212,929.70

**Total excludes applicable taxes*

Summary of Payments

Payment	Amount (USD)
Year 1	72,867.74
Spares	0.00
Year 2	35,015.49
Year 3	35,015.49
Year 4	35,015.49
Year 5	35,015.49
Grand Total	212,929.70

Taxes subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ Date: _____
Name (Print): _____ Title: _____
PO# (Or write N/A): _____

Please sign and email to Robbie Taylor at rtaylor@axon.com or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

The trademarks referenced above are the property of their respective owners.

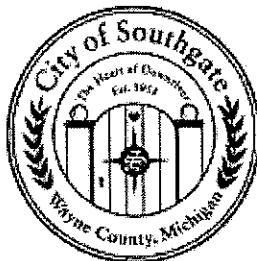
Axon Internal Use Only		
		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
		SO #:
Review 1	Review 2	
Comments:		

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JOSEPH G. KUSPA
Mayor

JANICE M. FERENCZ
City Clerk

JAMES E. DALLOS
Treasurer



City of Southgate

- CITY COUNCIL -

JOHN GRAZIANI
Council President

MARK FARRAH

KAREN E. GEORGE

BILL COLOVOS

DALE W. ZAMECKI

PHILLIP J. RAUCH

CHRISTOPHER P. ROLLET

December 9, 2020

To the Honorable
City Council
Southgate, Michigan 48195

Re: Recommendation for Cross Connection Control Program

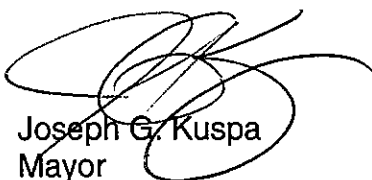
Ladies and Gentlemen:

It is recommended by the Finance Director and the DPS Director and I concur, that the contract for the Cross Connection Control Program be extended with Hydro Corp., Troy, Michigan for an amount of \$29,868.00 per year for 3 years.

Sufficient funds are available in the Water and Sewer Fund.

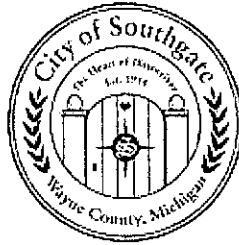
Your favorable consideration of this matter is requested.

Sincerely,


Joseph G. Kuspa
Mayor

JGK/law

JOSEPH G. KUSPA
Mayor
JANICE M. FERENCZ
City Clerk
JAMES E. DALLOS
Treasurer




City of Southgate

- CITY COUNCIL -

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PHILLIP J. RAUCH
CHRISTOPHER P. ROLLET

MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: David Angileri, Assistant City Administrator/Finance Director 

DATE: December 9, 2020

RE: Recommendation for Cross Connection Control Program

I have reviewed the above with the DPS Director and concur with his recommendation to extend this contract to Hydro Corp., Troy, Mi. total amount will now be \$29,868.00 per year for three years.

Adequate funds are budgeted in the Water and Sewer Fund to cover the cost of this cross connection control program.

From the Desk of:
Kevin Anderson
Acting Director, D.P.S.
December 9, 2020

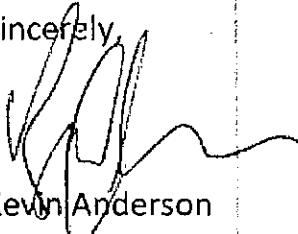
To: David Angileri
Finance Director

Re: Bid Extension Recommendation for Cross Connection Control Program

I respectfully request to extend the bid for the Cross Connection Control Program to **HydroCorp, 5700 Crooks Rd., Ste. 100, Troy, MI 48098**. They are our current contractor and have provided excellent service to the City. Over the past 10 years, they have acquired and maintain a large amount of records for the City. Therefore, I believe it would be in the best interest of the City to extend this contract for \$29,868.00 per year for three years .

If you have any questions, please contact me.

Sincerely,



Kevin Anderson
Acting Director, DPS

Enclosure

KA/sb

PROPOSAL

DEVELOPED FOR
Phil Ferro
Water Systems Supervisor
City of Southgate, MI

14719 Schafer Court
Southgate, MI 48195

December 9, 2020

KEEPING DRINKING WATER SAFE FOR INDUSTRIES AND MUNICIPALITIES

For over 30 years, HydroCorp™ has been dedicated to safe drinking water for companies and communities across North America. Fortune 500 firms, metropolitan centers, utilities, small towns and businesses – all rely on HydroCorp to protect their water systems, averting backflow contamination and the acute health risks and financial liabilities it incurs.

HYDROCORP

THE SAFE WATER AUTHORITY

CROSS-CONNECTION
CONTROL / BACKFLOW
PREVENTION

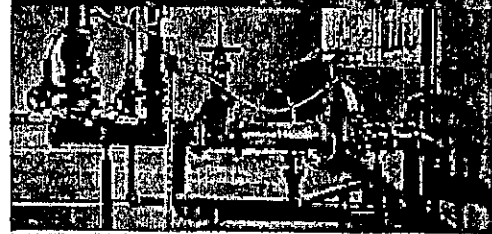
WATER SYSTEM
SURVEYS / AUDITS

PIPE SYSTEM MAPPING
AND LABELING

WATER SAMPLING
AND ANALYSIS / RISK
ASSESSMENTS

PROGRAM
AND PROJECT
MANAGEMENT

COMPLIANCE
ASSISTANCE /
DOCUMENTATION



MICHIGAN CORPORATE OFFICE
5700 Crooks Road, Suite 100
Troy, MI 48068
800.690.6651 TOLL FREE
248.250.5000 PHONE
248.786.1788 FAX GENERAL
Info@hydrocorpinc.com EMAIL



SCOPE OF WORK	3
PROFESSIONAL SERVICE AGREEMENT	4-10
QUALIFICATIONS	11



SCOPE OF WORK

Based on your current program, HydroCorp™ will provide the following services to the City of Southgate. This project is a continued effort for an ongoing Cross-Connection Control Program and will provide the City of Southgate with the necessary data and information to maintain compliance with the Michigan Department of Environment, Great Lakes, And Energy (EGLE) Water Bureau Cross Connection Control Regulations. Once this project has been approved and accepted by the City and HydroCorp, you may expect completion of the following elements within a three (3) year period. The components of the project include:

1. Annually, perform a minimum of 220 Commercial and 150 Residential initial inspections, compliance inspections, and re-inspections at individual industrial, commercial, institutional facilities and miscellaneous water users within the City served by the public water supply for cross-connections. Inspections will be conducted in accordance with the EGLE Water Bureau Cross Connection Control regulations.
2. Generate all backflow prevention assembly test notices, non-compliance notices and coordinate/monitor backflow prevention assembly testing compliance for all backflow prevention assemblies.
3. Perform administrative functions including: answering water user telephone calls, scheduling of inspections, mailing of all notices, verification of backflow prevention assembly tester credentials & proper testing results and general customer service and program education inquiries.
4. Generate and document the required program data for the facilities using the HydroCorp Software Data Management Program.
5. Submit comprehensive management reports on a quarterly basis.
6. Conduct an annual review meeting to discuss overall program status and recommendations.
7. Provide up to six- (6) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers, (i.e. combination) per commercial facility as required, in order to place a facility into immediate compliance at the time of inspection. At the Cities request vacuum breakers can be purchased in bulk (no less than 100) to be provided during residential inspections.
8. Prepare the annual State of Michigan, EGLE Water Bureau Cross Connection Report.
9. Assist the City with a community wide public relations program including general awareness brochures and customized web site cross connection control program overview content and resources.
10. Provide ongoing support via phone, fax, internet, text or email.

The above services will be provided for:

Monthly Amount: \$ 2,489.00

Annual Amount: \$ 29,868.00

Contract Total: \$ 89,604.00

Contract Amount is based upon a 36-month period. HydroCorp will invoice in 36 equal amounts of \$ 2,489.00



PROFESSIONAL SERVICE AGREEMENT

This agreement, made and entered into this DATE: _____ by and between the City of Southgate organized and existing under the laws of the State of Michigan referred to as "Utility", and HydroCorp™ a Michigan Corporation, referred to as "HydroCorp".

WHEREAS, the Utility supplies potable water throughout its corporate boundary to property owners; and desires to enter into a professional services contract for cross connection control program inspection, reporting and management services.

WHEREAS, HydroCorp is experienced in and capable of supplying professional inspection of potable water distribution systems and cross connection control program management to the Utility and the Utility desires to engage HydroCorp to act as its independent contractor in its cross connection control program.

WHEREAS, the Utility has the authority under the laws of the State of Michigan and its local governing body to enter into this professional services contract.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

ARTICLE I. Purpose

During the term of this Agreement, the Utility agrees to engage HydroCorp as an independent contractor to inspect and document its findings on its potable water distribution system in public, commercial and industrial facilities within the community. Each party to this Agreement agrees that it will cooperate in good faith with the other, its agents, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement. Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete and accurate, yet due to the inaccessible nature of water piping or due to access constraints within water users' facilities, complete and accurate data is not always available.

ARTICLE II. Scope of Services

The scope of services to be provided by HydroCorp under this Agreement will include the inspections/surveys, program administration, answering telephone call inquiries, scheduling of inspections, program compliance review, public education materials, preparation of quarterly management reports, and annual cross connection reports with respect to the facilities to the extent specifically set forth in this Article II (hereinafter the "Scope of Services"). Should other reports/services be included within the Scope of Services, the same shall be appended to this Agreement as Exhibit 1.

2.1 PROGRAM REVIEW/PROGRAM START UP MEETING. HydroCorp will conduct a Program Startup Meeting for the Cross-Connection Control/Backflow Prevention Program. Items for discussion/review will include the following:

- Review state & local regulations
- Review and/or provide assistance in establishing local Cross-Connection Control Ordinance
- Review/establish wording and timeliness for program notifications including:
 - Inspection Notice
 - Compliance Notice
 - Non-Compliance Notices 1-2, Penalty Notices
- Special Program Notices
- Electronic use of notices/program information
- Obtain updated facility listing, address information and existing program data from Utility
- Prioritize Inspections (City buildings, schools, high hazard facilities, special circumstances.)



- Review/establish procedure for vacant facilities
- Establish facility inspection schedule
- Review/establish procedures and protocol for addressing specific hazards
- Review/establish high hazard, complex facilities and large industrial facility inspection/containment procedures including supplemental information/notification that may be requested from these types of facilities in order to achieve program compliance.
- Review/establish program reporting procedures including electronic reporting tools
- Review/establish educational and public awareness brochures

2.2 INSPECTIONS. HydroCorp will perform initial inspections, compliance inspections, and re-inspections at individual industrial, commercial, institutional facilities and miscellaneous water users within the utility served by the public water supply for cross-connections. Inspections will be conducted in accordance with Michigan Department of Environment, Great Lakes, and Energy Cross Connection Control Rules.

- *Initial Inspection* – the first time a HydroCorp representative inspects a facility for cross connections. Degree of Hazard will be assigned and/or verified during this facility visit. The Degree of Hazard will dictate future re-inspection frequency/schedule of facility, (facility will be either compliant or non-compliant after this inspection).
- *Compliance Inspection* – subsequent visit by a HydroCorp representative to a facility that was non-compliant during the *Initial Inspection* to verify that corrective action was completed and meets the program requirements.
- *Re-Inspection* – Revisit by a HydroCorp representative to a facility that was previously inspected. The re-inspection frequency/schedule is based on the degree of hazard assigned to the facility during the initial inspection (two, six or ten year re-inspection cycle).

2.3 INSPECTION SCHEDULE. HydroCorp shall determine and coordinate the inspection schedule. Inspection personnel will check in/out on a daily basis with the Utility's designated contact person. The initial check in will include a list of inspections scheduled. An exit interview will include a list of inspections completed.

2.4 PROGRAM DATA. HydroCorp will generate and document the required program data for the Facility Types listed in the Scope of Services using the HydroCorp Software Data Management Program. Program Data shall remain property of the Utility; however, the HydroCorp Software Data Management program shall remain the property of HydroCorp and can be purchased for an additional fee. Data services will include:

- Prioritize and schedule inspections
- Notify users of inspections, backflow device installation and testing requirements if applicable
- Monitor inspection compliance using the HydroCorp online software management program.
- Maintain program to comply with all MDEQ regulations

2.5 MANAGEMENT REPORTS. HydroCorp will submit comprehensive management reports in electronic, downloadable format on a quarterly & annual basis to the Utility. Reports to include the following information:

- Name, location and date of inspections
- Number of facilities inspected/surveyed
- Number of facilities compliant/non-compliant

2.6 REVIEW OF CROSS-CONNECTION CONTROL ORDINANCE. HydroCorp will review or assist in the development of a cross-connection control ordinance. Items for review include: Code adoption references, standard operational procedures, program notice documentation, reporting procedures and preference standards and penalties for non-compliance.



2.7 VACUUM BREAKERS. HydroCorp will provide up to six (6) ASSE approved hose bibb vacuum breakers or anti-frost hose bibb vacuum breakers per facility as required, in order to place a facility into immediate compliance at the time of inspection if no other cross-connections are identified.

2.8 PUBLIC RELATIONS PROGRAM. HydroCorp will assist the Utility with a community-wide public relations program including general awareness brochures and website cross connection control program content.

2.9 SUPPORT. HydroCorp will provide ongoing support via phone, fax, text, website or email for the contract period.

2.10 FACILITY TYPES. The facility types included in the program are as follows:

- Industrial
- Institutional
- Commercial
- Miscellaneous Water users
- Residential
- Multifamily

Complex Facilities. Large industrial and high hazard complexes or facilities may require inspection/survey services outside the scope of this Agreement. An independent cross connection control survey (at the business owner's expense) may be required at these facilities and the results submitted to the Utility to help verify program compliance.

2.11 INSPECTION TERMS. HydroCorp will perform a minimum of 660 Commercial and 450 Residential inspections over a three (3) year contract period. The total inspections include all initial inspections, compliance and re-inspections.

2.12 COMPLIANCE WITH DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY (EGLE). HydroCorp will assist in compliance with EGLE and Michigan Plumbing Code cross connection control program requirements for all commercial, industrial, institutional, residential, multifamily and public authority facilities.

2.13 POLICY MANUAL. HydroCorp will review and/or develop a comprehensive cross connection control policy manual/plan and submit to the appropriate regulatory agency for approval on behalf of the Utility.

2.14 INVENTORY. HydroCorp shall inventory all accessible (ground level) backflow prevention assemblies and devices. Documentation will include: location, size, make, model and serial number if applicable.

2.15 DATA MANAGEMENT. HydroCorp shall provide data management and program notices for all inspection services throughout the contract period.

2.16 ANNUAL YEAR END REVIEW. HydroCorp will conduct an on-site annual year-end review meeting to discuss overall program status and specific program recommendations.

2.17 CROSS CONNECTION CONTROL BROCHURES. HydroCorp will provide approximately 150 cross-connection control educational brochures for the duration of the Agreement.

2.18 INSURANCE. HydroCorp will provide all required copies of general liability, workers compensation and errors and omissions insurance naming the Utility as an additional insured if required.



ARTICLE III. Responsibilities of the Utility

- 3.1 UTILITY'S REPRESENTATIVE.** On or before the date services are to commence under this Agreement, the Utility shall designate an authorized representative ("Authorized Representative") to administer this Agreement.
- 3.2 COMPLIANCE WITH LAWS.** The Utility, with the technical and professional assistance of HydroCorp, shall comply with all applicable local, state, and federal laws, codes, ordinances, and regulations as they pertain to the water inspection and testing, and shall pay for any capital improvements needed to bring the water treatment and delivery system into compliance with the aforementioned laws.
- 3.3 NOTICE OF LITIGATION.** In the event that the Utility or HydroCorp has or receives notice of or undertakes the prosecution of any actions, claims, suits, administrative or undertakes the prosecution of any actions, claims, suits, administrative or arbitration proceedings, or investigations in connection with this Agreement, the party receiving such notice or undertaking of such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.
- 3.4 FACILITY LISTING.** The Utility must provide HydroCorp a complete list of facilities to be inspected, including facility name, type of service connection, address, contact person, and phone number, (if available). *Electronic file format such as Microsoft Excel, etc. is required. An additional one-time fee to manually enter facility listing will be charged at the rate of \$80.00 per hour. Incorrect facility addresses will be returned to the Utility contact and corrected address will be requested.*
- 3.5 LETTERHEAD/LOGO.** The Utility will provide HydroCorp with an electronic file copy of the utility logo or utility letterhead and all envelopes for the mailing of all official program correspondence only. (300 dpi in either .eps, or other high quality image format for printing.)

ARTICLE IV. Term, Compensation and Changes in Scope of Services

- 4.1 TERM AND TERMINATION TERM.** Services by HydroCorp under this Agreement shall commence on 02/01/2021 and end three (3) years from such date, unless this Agreement is renewed or terminated as provided herein. The terms of this Agreement shall be valid only upon the execution of this Agreement within ninety (90) days of its receipt. Failure to execute this Agreement within the ninety (90) day period shall deem the proposed terms void.
- 4.2 RENEWAL.** Upon the expiration of this Agreement the utility will have the option to renew this agreement for two (2) additional years. Any cost increases at the time of renewal will be equal to the current rate of inflation (CPI) or 3%, whichever is less.
- 4.3 TERMINATION.** The Utility or HydroCorp may terminate this Agreement at any time and on any date in the initial and renewal terms of this Agreement, with or without any cause, by giving written notice of such intent to terminate to the other party at least thirty (30) days prior to the effective date of termination. Notice of the intent to terminate shall be given in writing by personal service, by an authorized agent, or by certified mail, return receipt requested. The Utility shall pay the balance of any outstanding accounts for work performed by HydroCorp.
- 4.4 BASE COMPENSATION.** From the Beginning thirty (30) days after execution of this Agreement, the Utility shall pay HydroCorp as compensation ("Base Compensation") for labor, equipment, material, supplies, and utilities provided and the services performed pursuant to this Agreement, the sum of \$2,489.00 per month, \$29,868.00 annually for a three (3) year contract period totaling \$89,604.00 subject to section 4.3.



- 4.5 PAYMENT OF INVOICES.** Upon presentation of invoices by HydroCorp, all payments including base and other compensation shall be due and payable on the first day of each month (due date) after the month for which services have been rendered. All such payments shall be made no later than thirty (30) days after the due date. Failure to pay shall be deemed a default under this Agreement. For any payment to HydroCorp which is not made within thirty (30) calendar days after the due date, HydroCorp, shall receive interest at one and one-half (1½) percent per month on the unpaid balance.
- 4.6 CHANGES IN SCOPE OF SERVICES.** In the event that the Utility requests and HydroCorp consents to perform additional work or services involving the consulting, management, operation, maintenance, and repair of the Utility's water delivery system where such services or work exceeds or changes the Scope of Services contemplated under this Agreement, HydroCorp shall be provided additional compensation. Within thirty (30) calendar days from the date of notice of such additional work or services, the parties shall mutually agree upon an equitable sum for additional compensation. This amount shall be added to the monthly sum effective at the time of change in scope. Changes in the Scope of Service include, but are not limited to, requests for additional service by the Utility or additional costs incurred in meeting new or changed government regulations or reporting requirements.
- 4.7 CLIENT CONFIDENTIALITY.** Disclosure of all communications between HydroCorp and the Utility regarding business practices and other methods and forms of doing business is subject to the provisions of Michigan Public Records Law. HydroCorp agrees to make available for inspection and copying all records in its possession created, produced, collected or otherwise related to this Agreement to the same extent as if the records were maintained by the Utility. HydroCorp expressly acknowledges and agrees that its obligations concerning Public Records Law and compliance under this Agreement should not be limited by copyright, license, privacy and/or confidentiality except as authorized under the Public Records Law.
- 4.8 ACCESSIBILITY.** Backflow prevention device information will be completed in full only when the identifying information (i.e. data plate, brass tag, etc.) is accessible and visible from ground level or from a fixed platform/mezzanine.
- 4.9 CONFINED SPACES.** – HydroCorp personnel will not enter confined spaces.

ARTICLE V. Risk Management and General Provisions

- 5.1 INFORMATION.** Both Parties to this Agreement recognize and acknowledge that the information presented to them is complete to the best of their knowledge, yet due to the inaccessible nature of water piping or lack of access provided by property owner/water user, complete accurate data is not always available. Cross-connection control inspection and results are documented as of a specific date. The property owner and/or water user may make modifications to the potable water system after the inspection date that may impact compliance with the program.
- 5.2 INDEMNIFICATION.** HydroCorp agrees to and shall hold the Utility, its elected and appointed officers, and employees harmless from any liability for claims or damages for personal injury or property damage which is caused by or arises from the sole negligence of HydroCorp in the performance of its services under this Agreement. The Utility agrees to and shall hold HydroCorp, its officers, and employees harmless from any liability for claims or damages for personal injury or property damage which is caused by, or arises from, the sole negligence of the Utility. In the event that both HydroCorp and the Utility are found by a fact finder to be negligent and the negligence of both is a proximate cause of such claim for damage, then in such event each party shall be responsible for the portion of the liability equal to its comparative share of the total negligence. HydroCorp's liability to the Utility for any loss, damage, claim, or expense of any kind or nature caused directly or indirectly by the performance or non-performance of



obligations pursuant to this Agreement shall be limited to general money damages in an amount not exceed or within the limits of the insurance coverage provided hereunder. HydroCorp shall in no event be liable for indirect or consequential damages, including but not limited to, loss of profits, loss of revenue, or loss of facilities, based upon contract, negligence, or any other cause of action.

5.3 HYDROCORP INSURANCE. HydroCorp currently maintains the following insurance coverage's and limits:

	Occurrence	Aggregate
Comprehensive General Liability	\$1 Million	\$2 Million
Excess Umbrella Liability	\$5 Million	\$5 Million
Automobile Liability (Combined Single Limit)	\$1 Million	
Worker's Compensation/ Employer's Liability	\$1 Million	
Errors and Omissions	\$2 Million	\$2 Million

Within thirty (30) calendar days of the start of the project, HydroCorp shall furnish the Utility with satisfactory proof of such insurance, and each policy will require a 30-day notice of cancellation to be given to the Utility while this Agreement is in effect. The Utility shall be named as an additional insured according to its interest under the general liability policy during the term of this Agreement.

5.4 UTILITY INSURANCE. The Utility will maintain liability insurance on an all risk basis and including extended coverage for matters set forth in this Agreement. The Utility and HydroCorp agree that with respect to insurance coverage carried by either party in connection with the Facilities, such insurance will provide for the waiver by the insurance carrier of any subrogation rights against the Utility or against HydroCorp as the case may be.

5.5 RELATIONSHIP. The relationship of HydroCorp to the Utility is that of independent contractor and not one of employment. None of the employees or agents of HydroCorp shall be considered employees of the Utility. For the purposes of all state, local, and federal laws and regulations, the Utility shall exercise primary management, and operational and financial decision-making authority.

5.6 ENTIRE AGREEMENT AMENDMENTS. This Agreement contains the entire Agreement between the Utility and HydroCorp, and supersedes all prior or contemporaneous communications, representations, understandings, or agreements. This Agreement may be modified only by a written amendment signed by both parties.

5.7 HEADINGS, ATTACHMENTS, AND EXHIBITS. The heading contained in this Agreement is for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments and Exhibits to this Agreement shall be construed as integral parts of this Agreement.

5.8 WAIVER. The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

5.9 ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written consent of the other unless such assignment shall be to the affiliate or successor of either party.

5.10 FORCE MAJEURE. A party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of actions due to causes beyond its reasonable control such as, but not limited to, Acts of God, the acts of civil or military authority, loss of potable water sources, water system contamination, floods, quarantine restrictions, riot, strikes, commercial impossibility, fires, explosions, bombing, and all such interruptions of business, casualties, events, or circumstances reasonably beyond the control of the party obligated to perform, whether such other causes are related or unrelated, similar or dissimilar, to any of the foregoing. In the event of any such force majeure, the



party unable to perform shall promptly notify the other party of the existence of such force majeure and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned force majeure.

- 5.11 **AUTHORITY TO CONTRACT.** Each party warrants and represents that it has authority to enter into this Agreement and to perform the obligations, including any payment obligations, under this Agreement.
- 5.12 **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, regardless of the fact that any of the parties hereto may be or may become a resident of a different state or jurisdiction. Any suit or action arising shall be filed in a court of competent jurisdiction within the State of Michigan, venue by the presiding County. The parties hereby consent to the personal jurisdiction of said court within the State of Michigan.
- 5.13 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 5.14 **NOTICES.** All notices, requests, demands, payments and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by nationally recognized overnight carrier, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

If to HydroCorp:

HydroCorp
c/o Mark Martin
5700 Crooks Road, Ste. 100
Troy, MI 48337
(248) 250-5002

If to Utility:

Phil Ferro
Water Systems Supervisor
City of Southgate
14719 Schafer Court
Southgate, MI 48195

- 5.15 **SEVERABILITY.** Should any part of this Agreement for any reason, be declared invalid or void, such declaration will not affect the remaining portion, which will remain in full force and effect as if the Agreement has been executed with the invalid portion eliminated.

SIGNATURES

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first above written.

City of Southgate

By: _____

Title:

HydroCorp

By: Paul M. Patterson
Its: Senior Vice President



Qualifications/Experience

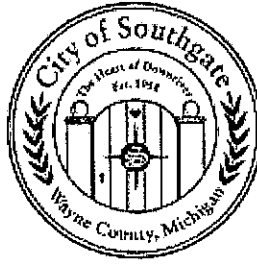
HydroCorp™ is a professional service organization that specializes in Cross Connection Control Programs. Cross Connection Control Program Management & Training is the main core and focus of our business. We are committed to providing water utilities and local communities with a cost effective and professionally managed cross connection control program in order to assist in protecting the public water supply.

- HydroCorp conducts over 30,000 Cross Connection Control Inspections *annually*.
- HydroCorp tracks and manages over 35,000+ backflow prevention assemblies for our Municipal client base.
- Our highly trained staff works in an efficient manner in order to achieve maximum productivity and keep program costs affordable. We have a detailed system and process that each of our field inspectors follow in order to meet productivity and quality assurance goals.
- Our municipal inspection team is committed to providing outstanding customer service to the water users in each of the communities we serve. We teach and train customer service skills in addition to the technical skills since our team members act as representatives of the community that we service.
- Our municipal inspection team has attended training classes and received certification from the following recognized Cross Connection Control Programs: UF TREEO, UW-Madison, and USC – Foundation for Cross Connection Control and Hydraulic Research, American Backflow Prevention Association (ABPA), American Society for Sanitary Engineering (ASSE). HydroCorp recognizes the importance of Professional Development and Learning. We invest heavily in internal and external training with our team members to ensure that each Field Service and Administrative team member has the skills and abilities to meet the needs of our clients.
- We have a trained administrative staff to handle client needs, water user questions and answer telephone calls in a professional, timely and courtesy manner. Our administrative staff can answer most technical calls related to the cross connection control program and have attended basic cross connection control training classes.
- HydroCorp currently serves over 200 communities in Michigan, Wisconsin, Maryland, Delaware, Virginia & Florida. We still have our first customer!
- HydroCorp and its' staff are active members in many water industry associations including: National Rural Water Association, State Rural Water Associations, National AWWA, State AWWA Groups. HydroCorp is committed to assisting these organizations by providing training classes, seminars and assistance in the area of Cross Connection Control.
- Several Fortune 500 companies have relied on HydroCorp to provide Cross Connection Control Surveys, Program Management & Reporting to assist in meeting state/local regulations as well as internal company guidelines.

JOSEPH G. KUSPA
Mayor

JANICE M. FERENCZ
City Clerk

JAMES E. DALLOS
Treasurer



City of Southgate

- CITY COUNCIL -

JOHN GRAZIANI
Council President

MARK FARRAH

KAREN E. GEORGE

BILL COLOVOS

DALE W. ZAMECKI

PHILLIP J. RAUCH

CHRISTOPHER P. ROLLET

Memorandum

To: Honorable City Council Members

From: Dustin Lent, City Administrator

Date: December, 11 2020

Re: WOW Agreement

In 2006 the State of Michigan legislature adopted the Uniform Video Services Local Franchise Act. The purpose of this act was to increase competition and offer a level of local control over the cable providers. Attached please find an extension agreement from WOW!. Our original contract from 2010 is set to expire at the end of the year.

This agreement has been drafted in compliance with all state statutes and will ensure no disruption with the current level of service provided to the residents of Southgate. Also, the agreement provides for the continued access to a public, education, and government channel. Wow has always provided the City and residents a valuable service and high quality access to information technology services.

The City Attorney has reviewed the attached documents and has no objection to the adoption of the agreement. Therefore I respectfully request City Council to authorize the Mayor and Clerk to sign on behalf of the City.

Please do not hesitate to contact me with any additional questions.



32650 North Avis Dr.
Madison Heights, MI 48071

November 20, 2020

Joseph Kuspa
Southgate
14400 Dix Toledo rd
Southgate , MI 48195

Dear Mr. Kuspa,

The Cable Communications System Franchise Agreement between Southgate and WideOpenWest Michigan, LLC, dated December 20, 2010 is near expiration. Please find enclosed two copies of Michigan's *Uniform Video Service Local Franchise Agreement* for The City of Southgate. Both copies are signed by Terrell Priester, WOW's Senior Director of Operations. The first two pages are the instruction sheets from the Michigan Public Service Commission's website.

I have listed the section of the Agreement that requires the Board's action and affixed a "sign here" tab at each section.

Section VI. Fees, A., ii asks the City to enter a franchise fee from 0% to 5%. The Cities current franchise fee is 5%. This amount is the percentage of the customer's bill (residing in the city) that is added to the customer's bill each month in the form of a franchise fee. WOW! collects these fees on behalf of the City and will begin sending these checks to the City quarterly.

Section VIII. PEG Fees (Public, Education & Governmental access fees), 1, 2 and 3, is not applicable. You can either leave them blank or enter zeros (0).

Page 9 of the Agreement and page 2 of Attachment 1 are signature pages. On page 9, *Date submitted* is the date you received the Agreement from WOW! and *Date completed and approved* is the date of the Board's action.

Please keep one copy of the Franchise agreements as the Cities original. Then send one of the completed Agreements to my attention in the enclosed envelope as soon as it's complete. Please let me know if I can be of assistance. My direct phone in Madison Heights is 248-677-9080.

Regards,

A handwritten signature in black ink, appearing to read "TPR", is written over a horizontal line.

Terrell Priester
terrell.priester@wowinc.com
[Phone \(248\) 677-9080](tel:2486779080)

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 Southgate, 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 Southgate:

City of Southgate

14400 Dix Toledo Rd

Southgate, MI 48195

Attn: Joseph Kuspa, Mayor

Fax No.: 734-246-1414

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.