



**AGENDA**  
**CITY OF CHARLEVOIX CITY COUNCIL SPECIAL MEETING**  
**Monday, July 31, 2017- 4:00 PM**  
**City Council Chambers, 210 State Street, Charlevoix, MI**

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- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Inquiry Regarding Conflicts of Interest**
- 4. All Other Actions and Requests**
  - A. Industrial Park Fiber Installation
  - B. 2017 Asphalt Improvement Contract
- 5. Reports and Communications**
  - A. Public Comment
  - B. City Manager Comments
  - C. Mayor & Council Comments
- 6. Other Council Business**
- 7. Adjourn**

*The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one weeks' notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids or services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250.*

# CHARLEVOIX CITY COUNCIL

## All Other Actions and Requests

**TITLE:** Industrial Park Fiber Installation

**DATE:** July 31, 2017

**PRESENTED BY:** Don Swem, Electric Superintendent

### BACKGROUND:

In 2014 the City was awarded a Rural Business Enterprise Grant (RBEG) from Rural Development, a division of the USDA. The grant was to install a fiber optic loop through the Industrial Park so that businesses can take advantage of the highest speed internet with a reasonable investment. The grant was for \$36,000 and the City committed to spending at least \$38,000 in matching funds. The project was put out for bids with the following results:

#### **Notice to Industrial Park Fiber RFP Respondents 9/9/2014**

On August 20, 2014 at 1:05 PM the received responses for the City of Charlevoix Industrial Park Fiber RFP were opened and read.

The as "read" results are as shown in the table below:

<b>Section</b>	<b>Fiber Link Inc.</b>	<b>ACD. NET (Voluntary Alternate)</b>	<b>Thayer Power &amp; Communications</b>	<b>Amcomm Telecommunications</b>
17000	\$1,500.00	0	0	\$4,792.59
17100	\$246,793.35	\$793,088.78	\$180,857.46	\$239,629.40
<b>Total Base Bid</b>	<b>\$248,293.35</b>	<b>\$793,088.78</b>	<b>\$180,857.46</b>	<b>\$244,421.99</b>

After analysis of the content of the responses and extended discussion the City of Charlevoix determined that all responses received exceeded the available budget for this project. Because the prices were too high for the budget, to save money, the City installed the conduits. We installed the conduits in 2015. The low bidder, Thayer Power and Communication, was asked to remove the conduit installation and provide a new price to complete the work, which they did.

At that time the project was being spearheaded by Bethany Pearson with help from Mike Spencer and Rob Straebel. All three left the City within a relatively short period of time, and the project ended up being dropped. A construction contract was prepared and underwent legal review but never went to Council for approval.

At this time we would like to complete this project. The USDA says the grant money is still available to us. Thayer has been contacted and has updated his proposal and is still willing to do the work. John Childs is our technical consultant on the project and he provided the contract and will oversee the construction and testing. The cost for the construction contract to complete the fiber installation is \$41,020.11. The proposed contract is attached. Mr. Childs has recommended that Thayer Power and Communication be hired to finish the work.

### RECOMMENDATION:

Motion to authorize the Mayor to sign and the City Clerk to attest to the Construction Contract with

Thayer Power and Communication to install Fiber Optic lines in the Industrial Park for a total of \$41,020.11.

**ATTACHMENTS:**

- ▣ Proposed Contract

# **Agreement for Installation of Technology Fiber Optic Cable & Components**

***City Attorney Review Draft 7/5/17***

***Council Review Draft 7/13/17***

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Between Thayer Power & Communications Line Construction Co., LLC  
(Contractor)

*City of Charlevoix, MI (Owner)*

For

Industrial Park Fiber Expansion: Fiber Design, Supply, Installation, and  
Testing (the work)

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## **AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_, 2017, between Thayer Power & Communications Line Construction Co., LLC (“Thayer”) or (“Contractor”), with its principal offices located at 7400 Market Road, Fairview, PA 16415 and City of Charlevoix, MI (“City”) or (“Owner”), with its principal offices located at 210 State St., Charlevoix, MI 49720.

### **RECITALS**

- A. The Contractor is involved in the design, supply, installation, documentation, training, and warranty of fiber optic cable systems as described in the Request for Proposal (“RFP”) and the associated Addenda, as issued by the Owner.
- B. The purpose of this Agreement is consistent with and in accordance with the Request for Proposal (RFP) and associated materials.
- C. The Contractor is not responsible for any portion of the underground boring of conduit to contain the fiber optic cable and in ground vaults (hand holes). The work of installation of conduit has been completed by the City of Charlevoix using its own Department of Electrical Service and its own boring equipment and staff..

In consideration of the facts stated above, the mutual covenants and agreements of the parties, and other valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, IT IS AGREED:

### **ARTICLE 1 – CONTRACT DOCUMENTS**

1.0 Contract Documents. The Contract Documents consist of and, in case of conflict, shall be interpreted in this order:

- 1. Agreement for Installation of Fiber Optic Cable Systems (*this document*)
- 2. Addenda (*listed separately in included documents*)
- 3. Request For Proposal (RFP) including Appendices and Blueprints (*if applicable*)
- 4. Contractor’s Bid Response
- 5. Performance, Labor and Materials Bond (PLM)
- 6. Required Insurance
- 7. Payment Schedule

These documents form the Contract, and are as fully a part of the Contract as if repeated herein. The Contract represents the entire integrated Agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

## **ARTICLE 2 – SCOPE OF WORK**

2.0 Contract Work. The Contractor shall execute the entire work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.0.1 Contract Initiation. The Contractor is authorized to proceed with the work, as outlined in the project documents, upon complete execution of this agreement. The Contractor has agreed that acquisition of Fiber Optic Cable System components will not occur by the contractor until the Owner and The Contractor agree on the final schedule of values, and proper time to place components orders. It is anticipated that such a time will be as soon as practical.

2.0.2 The Owner is not obligated to compensate the Contractor for any fee, expense, or other cost incurred prior to the execution of this contract unless stated otherwise under a separate authorized document (either a Letter of Intent or a valid Purchase Order).

2.0.3 The Owner shall provide all necessary electrical service to support the installed Fiber Optic Cable System. The Contractor shall specify the locations requiring electrical service in its installation field survey at the start of the project. At the time of this contract no specific electrical requirements have been identified.

2.1 Labor and Equipment. The Contractor shall provide all labor, equipment, materials, transportation, inspections, permits, fees, testing, and supervision necessary to provide the installation of the System as specified in the RFP.

2.2 Owner's Right to Stop the Work. If the Contractor fails to correct work which is not in accordance with the requirements of this Contract Document as stated herein, or fails to carry out work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the work or any portion thereof until the cause for such order has been eliminated.

2.3 Owner's Right to Carry Out the Work. If Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails, within a seven (7)-day period after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may carry out the work themselves or hire others. In such case, an appropriate Change Order shall be issued deducting the costs of correcting such deficiencies, including the Owner's expense and compensation for the Owner's Representative's(s') work. Additional services may be necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner and/or the Contactor's bonding company.

## **ARTICLE 3 – ADMINISTRATION OF THE CONTRACT**

3.0 Owner's Representative(s)

3.0.1 Contract Administration, Project Management, and final System testing / acceptance may be carried out by the Owner, the Technology Designer, the Construction

Manager, or a combination thereof. From hereafter, the term “Owner’s Representative(s)” means the appropriate party (ies) that have direct responsibility in supervising the Contractor’s work.

3.0.2 The Owner’s Representative(s) will provide Contract administration through final acceptance.

3.0.3 The Owner’s Representative(s) will accept all payment applications, visit the job site, track progress, and review the quality of installation to verify payment requests as needed.

3.0.4 The Owner’s Representative(s) has no control over and is not in charge of, or responsible for, the construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the work. These are solely the Contractor’s rights and responsibilities.

3.0.5 The Owner’s Representative(s) will not be responsible for the Contractor’s failure to perform the work in accordance with the requirements of the Contract Documents. The Owner’s Representative(s) will not have control over, will not be in charge of, and will not be responsible for acts or omissions of the Contractor, Subcontractor, their agents or employees, or any other persons or entities performing portions of the work.

3.0.6 Based on receipt and verification of the Contractor’s applications for payment, the Owner’s Representative(s) will recommend payment to the Owner in such amounts.

3.0.7 The Owner’s Representative(s) will have authority to reject work that does not conform to the Contract Documents.

3.0.8 The Owner’s Representative(s) will review and approve, or take other appropriate action, on the Contractor’s submittals.

3.0.9 The Owner’s Representative(s) will prepare field Change Orders and recommend acceptance to the Owner. The Change Order becomes part of the Agreement upon signature of all parties.

3.0.10 The Owner’s Representative(s) will conduct final testing of the System to determine final System acceptance. The Warranty period begins upon acceptance of final testing.

3.0.11 The Owner’s Representative(s) will interpret matters concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Owner’s Representative(s) will respond within 20 (20) business days of all requests.



## **ARTICLE 4 – CONTRACT SUM**

### **4.0 Purchase Price.**

The Purchase Price for the work described in the RFP and associated project documents shall be as follows:

#### **NOT TO EXCEED:**

**Forty Two Thousand three hundred fifty-seven and 21/100 dollars     (\$41,020.11)**

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Breakdown of the award is as follows:

Base Bid: Work Completion	\$39,518.41
PLM Bond:	\$1,501.70
Total this contract base bid:	<b>\$41,020.11</b>

4.1 A final schedule of Contract values (breakdown of labor and materials costs on a location-by-location basis) will be prepared by the Contractor, and made part of this Contract. The Contractor is required to submit the schedule of values to the Owner's Representative(s) for review and approval prior to submittal of the first invoice.

4.1.1 The Owner reserves the unrestricted right to reduce, or increase, the Contract amount, via the Change Order process, by adjusting the scope of work. Unit pricing, as specified in the bid proposal, will be used to control Contract adjustments. Any such action will be taken before specific work on a location or on a project component has commenced.

4.1.2 No restocking fees, additional administrative fees, etc. will be permitted associated with work reduction.

4.1.3 In the event this work becomes eligible for USF reimbursements, the Contractor agrees to amend this Agreement as needed to fully comply with the USF program.

4.2 Application for Payment. The Owner shall make progress payments up to ninety percent (90%) of all components installed or materials stored – ten percent (10%) will be retained / withheld until final System acceptance.

4.3 This Agreement contains a payment schedule. The Contractor must submit the invoice by the stated date in order to receive funds in the following month. Absence of meeting the established date will delay the payment until the following month. All invoices must be submitted to the Owner's Representative(s) for review and verification.

4.4 Applications for payment / invoices shall not be deemed received until the Contractor has provided the required supporting documentation (waivers of liens, packing slips, warehouse insurance, installation progress documentation, etc.).

4.5 The required invoice method (AIA G702/G703 form, invoice, etc.) is defined in this Agreement.

## **ARTICLE 5 – PERFORMANCE OF WORK**

5.0 The Contractor is required to perform the work, labor, materials, and such other equipment as may be required to meet all standards of the RFP.

5.0.1 The Contractor agrees that this is a “Performance Contract” and the total end product of the Contractor’s work is a “ready to be used fiber optic cable system;” however, no specific connected use is anticipated at the contract completion. However, testing of the Fiber to perform in accord with specific requirements as detailed in the City of Charlevoix Revised RFP as issued shall constitute satisfaction of performance requirement.

5.0.2 Additional requirements and procedures: None

5.0.3 No payment for any portion of any system installed is owed the Contractor from the Owner until such a time as the performance of the system has been demonstrated. The Owner may make conditional advanced payments to the Contractor for materials when it is received by the Contractor and stored in segregated inventory and valid inventory documents are presented with a request for advanced payment.

5.0.4 Should additional devices of any type be required to achieve required test results (see RFP), such device(s) shall be supplied and installed at the Contractor’s expense. The Contractor shall provide (as applicable) and pay for labor, materials, equipment, tools, shipping, storage, applicable taxes, etc. needed for a fully operational System.

5.0.5 Any advance that may be made to the Contractor shall be refunded to the City should the system fail to perform (fail to pass testing) and the city direct that it be removed at the Contractor’s expense. The Contractor may make substitutions only with the consent of the Owner after evaluation by the Owner’s Representative(s) and in accordance with an issued Change Order.

5.1 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.2 Inspection of the Site. The Contractor represents that it has visited and obtained all pertinent information concerning the site locations, surrounding conditions and accessibility for delivery of materials. The Contractor represents that it has paid particular attention to limitations imposed on its operations by the existing activities and has taken such into account in preparing its Contract Price. Failure on the part of the Contractor to have obtained all information necessary to complete all work in connection with the System does not release the Contractor of its responsibilities.

5.3 Review of Contract Documents. It is the Contractor’s responsibility to identify all field conditions that may impact the Contract scope and materials provided. Any field changes or inconsistencies discovered by the Contractor shall be reported promptly to the Owner’s Representative(s).

5.4 Any System design errors or omissions or failure to perform as specified in the RFP are the Contractor’s responsibility to correct at no cost to the Owner or the Owner’s Representative(s). The Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations of all applicable local, state, and Federal

codes. Any non-conformity discovered or made known to the Contractor shall be reported promptly to the Owner's Representative(s).

5.5 The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract unless the Contract Documents give other specific instructions.

5.6 Omissions. The Contractor shall be responsible for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors.

5.7 Laws. The Contractor shall comply with all federal, state and municipal laws, rules, regulations, ordinances, or orders governing or affecting in any way the work under this Contract and shall give all notices and obtain all permits necessary and required for this work and shall pay all costs and fees for the same, except as otherwise set forth in this Agreement.

5.8 Non-Compliance with Laws. If the Contractor performs work that is contrary to the laws, statutes, ordinances, building codes, and rules and regulation, the Contractor shall assume appropriate responsibility for such work and shall bear the costs attributable to the correction.

5.9 Staffing. The Contractor shall employ a qualified Project Manager, System Engineer(s), certified installers, etc. as needed in carrying out the work. The Project Manager will be the only contact with the Owner's Representative(s) and is responsible for the overall project.

5.10 Prevailing Wage. If applicable to the work being performed, prevailing wage laws shall be followed by all parties associated with the construction, installation, and maintenance of the System.

5.11 Protection of Persons and Property. The Contractor agrees to exercise special precautions to avoid damage to facilities of the Owner and each of its participants and of others. The Contractor assumes responsibility for any and all damages to such facilities arising out of or caused by the conduct or property of the Contractor whether by the negligence of the Contractor, its employees, or agents.

5.12 Contractor's Responsibility For Injury. From the start of work through the acceptance of the system by the Owner, any claims by the Contractor's employees, Subcontractor employees, Owner's employees, or individuals, damage to property (including property of the Owner, other Contractors, Subcontractors, individual, etc.), and theft or vandalism that occur due to direct or indirect action of the Contractor shall be the Contractor's responsibility. The Contractor shall assume all responsibility for and shall indemnify and hold harmless the Owner, Owner's Representative(s), and its participant entities from and against all losses, liabilities, claims, demands, payments, actions, legal proceedings, recoveries, costs, expenses, attorney fees, settlements, judgments, orders, and decrees.

5.13 Notwithstanding the foregoing, the Contractor shall not be required to indemnify the Owner against liability for damages arising out of bodily injury to persons, damage to property, or interruptions to service caused by or resulting from the sole negligence of the Owner or their agents or employees.

5.14 Scheduling of Work. The Contractor, promptly after the date of contract signing by both parties, shall prepare and submit to the Owner's Representative(s) a detailed installation/construction

schedule for the work. The schedule shall not exceed time limits currently under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the work and project, shall be related to the entire project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the work. The Contractor shall update the timeline as required to reflect any approved construction delays.

5.15 Industry Standards. All work must meet applicable established industry codes (NESC, American Society For Testing Materials, IEEE, TIA/EIA, BICSI, MicTA, UL, FCC, MPSC, Utility Companies, etc.).

5.16 Safety. The Contractor is responsible for job safety and will exercise precautions at all times for the protection of persons and of property. The Contractor shall follow the safety provisions of applicable laws, rules, regulations, safety standards, and building and construction codes. The Contractor shall guard against safety hazards in accordance with the safety provisions of the manual of accident prevention in construction, published by the Associated General Contractors of America, to the extent that such provisions are not in conflict with applicable laws.

5.17 ACM. Under no circumstances may the Contractor use or bring on site any harmful agents, asbestos-containing materials (ACM), or disturb an existing ACM area. The Contractor is required to review the MSDS and MIOSHA sheets prior to start of work. All cost associated with “clean up” of Contractor’s actions will be corrected at the Contractor’s expense.

5.18 Fire Protection. The Contractor will comply with all applicable laws, rules, and regulations of the Michigan Department of State Police, Fire Marshall Division, the State Fire Safety Board, and local agencies.

5.19 **NO SMOKING** will be allowed on the Owner’s premises including public right of way.

5.20 Cleaning Up. The Contractor shall breakdown and removes all boxes, packing materials, and installation debris from the site at the end of each shift. If needed, the Contractor will make arrangements for a dumpster. Location of the dumpster must be approved prior to placement.

## 5.21 Use of Subcontractors

5.21.1 The Contractor may use a Subcontractor for a portion of the work. The Owner's Representative(s) has the authority to remove any individual, a crew, or a firm from the project based on inappropriate behavior, lack of performance, or past problems.

5.21.2 The Contractor shall remove the person / Subcontractor within eight (8) hours of a written complaint by the Owner's Representative(s) as directed by the Owner. The Contractor shall replace the person / Subcontractor within seventy-two (72) hours of the complaint. No delay in the project will be permitted.

5.21.3 The Contractor will require all Subcontractors to sign an agreement that binds them to all the terms and conditions as stated in this Agreement.

## 5.22 Termination by the Owner For Cause.

5.22.1 The Owner may terminate the Contract if the Contractor: 1) repeatedly refuses or fails to meet timelines and/or supply enough properly skilled workers or materials, 2) fails to make payments to Subcontractors or suppliers, 3) disregards laws, ordinances, or rules, or 4) commits a breach of a provision of the Contract Documents.

5.22.2 When any of the above conditions exist, the Owner may, without prejudice to any other rights or remedies and after giving seven (7) days' written notice to the Contractor's surety company, terminate employment of the Contractor and may:

- a) Take possession of the site, of all materials, and of the Contractor's equipment and tools
- b) Accept assignment to Subcontractors
- c) Finish the work by whatever reasonable method the Owner deems expedient. Upon request of the Contractor, the Owner shall furnish a detailed accounting of the costs incurred by the Owner in finishing the work.

5.22.3 When the Owner terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the work is finished.

5.22.4 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work (including compensation for additional Owner Representative(s) services and expenses and other damages incurred by the Owner), such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner within thirty (30) days.

5.22.5 Absence of the Contractor to cover the costs associated with finishing the work will warrant a claim against the Contractor's PLM bond and recovery of damages as permitted by Law.

## **ARTICLE 6 – TESTING AND TRANSFER OF OWNERSHIP**

6.0 Time of Completion. The Contractor shall achieve Substantial Completion of the work with final System acceptance per the attached timeline.

6.1 Substantial Completion. Substantial Completion shall be defined as the complete installation of the System with all Contractor testing and documentation responsibilities completed, but prior to final System acceptance.

6.2 Testing. Depending on the System being installed, either Stage 1 or Stage 2 testing will be performed. Stage 1 involves physical verification of components. Stage 2 involves the performance and operational testing of the System upon completion. This contract requires Stage 2 testing with the Owner's representative observing the testing. Subsequently, the Owner shall review the testing documentation prior to certifying substantial completion.

6.2.1 Stage 1 - Physical Inventory Testing. Responsibility for physical loss or theft of components (i.e., computers, monitors, LAN switches, phone instruments, etc.) will transfer to the Owner upon receipt of an authorized signature. The Contractor is required to notify the Owner's Representative(s) prior to delivery of product to the site. The Owner's Representative(s) will make arrangements to inventory the Bill of Materials at the Owner's site or the Contractor's warehouse. Upon verification and documentation of serial numbers (provided by the Contractor), the Owner's Representative(s) will sign a receipt indicating all items are present. Verification only transfers the physical loss or theft of the product to the Owner's General Insurance.

6.2.2 Stage 2 - Performance Testing. The Owner's Representative(s) with the contractor's personnel will conduct the final System testing within thirty (30) days upon written notification of installation completion and receipt of final documentation. A meeting will be scheduled with all parties to review the documentation, warranty information, and perform a final System test.

6.2.3 If it is determined that the work is completed, the Owner's Representative(s) will recommend final payment. Final payment represents the start of warranty for all Contractor provided components and systems for both parts and labor. Note: All Owner direct purchases (i.e., computers) will have a start of warranty (parts only) based on the ship date. Warranty for installation, project labor, and any other elements on Owner direct purchases begins upon final System acceptance.

6.2.4 If the Owner, or the Owner's Representative(s), determines that the System does not meet the specifications, a written report of any deficiencies will be provided to the Contractor within fourteen (14) working days from the date of inspection.

6.2.4.1 The Contractor shall have fourteen (14) working days from receipt of the punch list to correct all deficiencies. When the deficiencies have been corrected, the Contractor shall notify the Owner's Representative(s) whom will return within fourteen (14) working days to verify the correction.

6.2.4.2 Absence of correcting the punch list items within the fourteen (14) working days places the Contractor on notice for non-performance – see Article 5.23 Termination by the Owner For Cause for additional information. Conditions outside of the Contractor's control will be reviewed by the Owner's Representative(s) to extend the time period if necessary. However, under no circumstance will the time exceed thirty (30) days. The Owner's Representative(s) will provide good faith and judgment in advising the Owner accordingly.

6.3 The criteria used to proof operation and performance of the System is defined in the RFP and all addenda as indicated by the intent of the RFP, specific stated requirements and all elements included in this contract.

6.4 Documentation. Prior to Substantial Completion, the Contractor shall furnish to the Owner's Representative(s) multiple documentation sets (see RFP for quantity) including test results, network diagrams, as-builts, software licenses, asset tag information, configuration information, etc. – see the RFP for a complete list of documentation items to be included in the final package.

6.5 Acceptance of System. The System shall be deemed accepted and completed by the Owner following successful testing for "Substantial Completion," outlined above. The Owner's Representative(s) shall issue an acceptance letter to the Owner and copy it to the Contractor.

## **ARTICLE 7 – WARRANTY**

### **7.0 General**

7.0.1 The Contractor / manufacturer(s) guarantees that all hardware and software provided in the System is new and of the latest model / version at the time of installation with all software patches installed.

7.0.2 The Contractor / manufacturer acknowledges that they are the owner of the System (software and hardware) and have the legal right to sell, distribute, install, and provide a limited license to the Owner to use per the RFP and Contract Documents. The Contractor / manufacturer will defend and hold harmless the Owner and the Owner's Representative(s) from all claims for patent and copyright violations.

7.0.3 The Contractor acknowledges that they are certified as an integrator to install, maintain, and repair the System and related components.

7.0.4 Assignment of Warranties. The warranties and representations may be assigned to the extent permitted by equipment manufacturers and suppliers.

### **7.1 Construction Warranty**

7.1.1 The Contractor agrees to provide a Construction Warranty for twelve (12) months following final System acceptance. The Construction warranty covers all oversights, if any, during the final walk through. If it is determined that an item was missed during the twelve

(12)-month period, the Contractor shall return and correct the oversight within thirty (30) days at no cost.

7.1.2 The Construction Warranty does not cover System configuration changes caused by System use, items superseded by Change Orders, or typical service maintenance related items.

## 7.2 Parts and Labor Warranty

7.2.1 All hardware, software, and labor provided in the System are covered by a depot warranty – see the RFP for warranty duration and type (OEM or Contractor). The Contractor will respond to all service calls within eight (8) business hours of a trouble call.

7.2.2 The warranty covers all on-site parts and labor required to repair or fix the failed component via depot service (remove component, send out for repair, reinstall upon return, and reconfigure to normal operation).

7.2.3 The Contractor covers all labor, transportation, shipping expenses, etc. as part of the base Contract. The failed components will be removed, tagged with a service ticket, documented, and overnight shipped (next day air) for authorized repairs.

7.2.4 The Owner may have spare parts on-site which the Contractor will install while the permanent unit is sent out for servicing.

7.2.5 Upon receipt of the repaired component, the Contractor will have the unit reinstalled within one business day.

7.2.6 Additions, moves, and modifications, performed after completion of the System are not covered under the depot warranty.

7.2.7 The Contractor shall pass on to the Owner any manufacturer or supplier warranties for equipment and facilities purchased under this Agreement.

7.2.8 All warranties shall be free of any obligation of the Owner to purchase and maintain any service contracts. However, where a service contract has been purchased it shall effectively extend the warranties.

## 7.3 Service Maintenance

7.3.0 This section only applies if the Owner accepted a Service Maintenance Contract as part of the award. See the RFP for additional information. Note: Service Maintenance may be made a part of this contract by amendment at the time of the award of a Maintenance Support contract.

7.3.1 The Contractor shall furnish maintenance services to the Owner as specified in the RFP. The Contractor shall be responsible for conducting all routine, ongoing, and emergency maintenance services as purchased under this Agreement.



7.3.2 Statement of Maintenance Charges. In each instance where charges for general routine, ongoing, or emergency maintenance are billed to the Owner, the Contractor shall provide to the Owner a statement detailing the hourly charges for labor and use of equipment and the costs of all materials to be charged. The hourly charges for labor and use of equipment for the first year of the term of this Agreement are set forth in the Response to the RFP. Increases in charges for labor and use of equipment for general routine, ongoing, or emergency maintenance shall not exceed on an annual basis the most recent annual increase in the Consumers Price Index-all Urban Consumers (CPI-U) for Detroit, MI, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

7.3.3 Performance of Modifications. The Contractor or another entity to which the Owner has provided consent, which shall not be unreasonably withheld, shall perform all modifications. Charges for work for modification and/or System changes shall be handled per the RFP.

7.3.4 The Owner shall not be liable for payment for any System modification made solely for the benefit of Contractor. All maintenance service agreements shall be performed per the RFP, as applicable.

## **ARTICLE 8 – INSURANCE**

### **8.0 Proof of Insurance**

8.0.1 The Contractor shall, at its sole expense, secure and maintain in force in the name of the Contractor during the term of this Agreement, policies of insurance of the following types:

- (a) Workers' Compensation Insurance with Michigan statutory limits;
- (b) Comprehensive General Liability Insurance with a minimum combined bodily injury and property damage single limit of at least \$1,000,000 per occurrence (or as stated in the RFP). The Owner and Owner's Representative(s) shall be included as an Additional Insured as its interests may appear;
- (c) Contractual Liability Insurance specifically endorsed to cover liability assumed by the Contractor under this Agreement with the Owner, products liability, and excess liability insurance, in addition to that specifically named, in the amount of at least \$1,000,000 per incident and \$2,000,000 in the total for this project (or as stated in the RFP);
- (d) Builder's risk (fire and extended coverage) to insure one hundred percent (100%) of the value of the property for the benefit of the Contractor, of the Owner, and any Subcontractor(s) as their interests may appear;
- (e) Automobile Liability Insurance with a minimum combined bodily injury and property damage single limit of at least \$1,000,000 per occurrence, providing coverage for owned, non-owned and hired vehicles.

8.0.2 Proof of the above insurance shall be provided to the Owner prior to commencing work. The Contractor's insurance companies shall be bound to provide a minimum of thirty (30) days' notice to the Owner of any pending lapse of the Contractor's insurance.

## 8.1 Bonding Requirements

8.1.1 The Contractor shall, at its sole expense, furnish to Owner security bonds of the following types and amounts:

Performance Bond	100%
Labor & Material Bond	100%

Each such bond shall be with a surety company licensed to do business in the State of Michigan, or posted as a cash deposit in lieu of bond an equivalent amount.

8.1.2 The Contractor on this project shall be required to provide a Performance Bond and a Labor and Materials Payment Bond covering the faithful performance of the Contract and the payment of obligations arising thereunder in a penalty sum equal to one hundred percent (100%) of the amount of the Contract sum (includes Change Orders). Said bonds shall remain in effect for twelve (12) months after the date established as the start of a one (1)-year guarantee period. Premiums shall be included and paid for by the Contractor. Bonds shall be submitted on AIA Document A311/CM or an adequate and proper surety company form conforming to the AIA document A311/CM. It is required that the surety company complies with the following:

- (a) Be listed in the "Federal Register," latest applicable issue, by the U.S. Department of the Treasury, Fiscal Service, Bureau of Government Financial Operations (Circular #570);
- (b) Not exceed, at the time of bidding or issuance of Contract for its project, the underwriting limitations (on any one risk) as stipulated in the "Federal Register";
- (c) Be acceptable to the Owner;
- (d) Insurance and Surety companies shall be deemed qualified and acceptable to the Owner in connection with Contractor bonding and insurance requirements under said contracts only if such companies have a policy holder's rating of A+/-, A+, A or A-, a financial category not less than Class VII, all shown on Best's Key Rating Guide, latest edition provided. However, the bond shall be furnished by one of the aforesaid qualified Sureties who is also listed in the Department of the Treasury Circular 570, Volume 41, No. 132 Part V (Federal Register) and is licensed in the State of Michigan and the penal sum of the bond does not extend the underwriting limitation set forth in the subject Circular, unless the excess, if any, is reinsured with the approval of the Owner.
- (e) The bidder shall require the attorney-in-fact that executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of his power-of-attorney indicating the monetary limit of such power;
- (f) The bonds shall be made for not less than one hundred percent (100%) of amounts due under the (each) Contract, for base bid and any alternates or other cost included at the time of the execution of the Contract. The Contractor shall have made

provisions to cover additional amounts that may raise the total Contract amount, which may be authorized as provided for under “Changes In The Work.” This may be done either by making provisions for such additional items in the text of the bond or by the issuance of an amendment or rider to provide for the additional coverage. There will be no increase in Bond cost attributed to this project unless an increase in the bond is requested specifically.

## **ARTICLE 9 – CHANGES IN THE WORK**

9.1 All System changes will be submitted to the Owner’s Representative(s) for review and recommendation. Upon Owner review, the Owner’s Representative(s) will draft a formal Change Order which incorporates the material and labor cost associated with work and a description of the work on a building-by-building level. The Change Order will be forwarded to all parties for review and approval (formal signature is required). Upon complete execution of the Change Order, the Contractor will proceed with the approved work accordingly.

9.2 The Contractor will submit material and labor costs as stated in the bid response. All unit pricing submitted in the bid proposal is binding through the duration of the project. All price drops will be passed on to the Owner and reflected in the Change Orders.

9.3 No administrative fee or penalty will be incurred for product restocking.

9.4 All Change Orders will be itemized separately on all invoices.

## **ARTICLE 10 – INDEMNIFICATION**

10.0 The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold the Owner and the Owner’s Representative(s) harmless from any claims, losses, damages, liabilities, or expenses of any kind whatsoever (including reasonable attorney’s fees and costs of defense) arising from any acts, errors, or omissions of the Contractor and its officers, directors, employees, agents, representatives, Subcontractors, or consultants.

10.1 Notwithstanding the provisions of the Contractor’s bid proposal, clarifications and exceptions, the Owner and Owner’s Representative(s) do not assume any liability that the Contractor may incur to any third parties on account of its performance of this Agreement.

10.2 The Contractor agrees to promptly repair and indemnify and hold the Owner harmless on account of any damage it causes to Owner’s facilities resulting from its work. If the Contractor fails to do so, in addition to any other remedies the Owner may have pursuant to this Agreement or by law, the Owner may withhold from any sums due to Contractor pursuant to this Agreement such amounts that are sufficient to cover the cost of repair or indemnity.

## **ARTICLE 11 – TERMS AND OTHER PROVISIONS**

11.0 Term of Agreement. This Agreement shall remain in full force and effect through the warranty period.

11.1 Effectiveness. This Agreement supersedes any and all agreements, if any previously made, between the parties relating to the subject matter hereof and there are no understandings or agreements other than those included herein.

11.2 Construction and Governing Law. This Agreement has been executed in the State of Michigan, and shall be construed in accordance with the laws of the State of Michigan.

11.3 Delay of Performance. Contractor's sole remedy in the event its performance is delayed due to circumstances beyond its reasonable control is a reasonable extension of the time for it to complete its performance of this Agreement.

11.4 Survival. The provisions relating to Contractor's responsibilities for liability, indemnity, and holding the Owner harmless, as well as any warranties related to the materials provided or work performed under this Agreement shall be effective on the date of this Agreement and shall survive the completion or termination of this Agreement.

11.5 Assignment. This Agreement and the rights and duties hereunder may not be assigned or transferred by either party without the written consent of the other party.

11.6 Benefit. This Agreement shall be binding upon and insure to the benefit of the respective legal representatives, successors, and assigns of the parties.

11.7 Alteration. Except as otherwise provided for herein, this Agreement cannot be amended, altered, or any of its provisions waived on behalf of either party, except in writing by a duly authorized agent of either party

11.8 Attached Schedules. All of the Attachments and other documents referenced herein form an integral part of the understandings and agreements between the parties and, as such, are a part of this Agreement.

11.9 Headings. The paragraph headings used in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

11.10 Severability. If any part of this Agreement is held to be invalid or unenforceable under the laws of the State of Michigan, the remaining provisions shall be enforceable to the maximum extent permitted by law; provided that such remaining provisions effectuate fully the intent of the parties as manifested herein.

11.11 Waiver. Waiver by either of the parties of any of the provisions, terms, or conditions of this Agreement shall not constitute a permanent waiver of any such provision, term, or condition, and that each of the provisions of this Agreement shall at all times remain in full force and effect until modified by the parties in writing.

11.12 Execution of Contract Documents. The Owner and Contractor shall sign the Contract Documents. If either the Owner or Contractor or both do not sign all of the Contract Documents, but nevertheless perform the work in accordance with the Owner's RFP, they shall be deemed subject to the terms of the Contract Documents.

11.13 Notices. All notices or communications required or permitted to be given under this Agreement shall be addressed as noted in the signature addresses.

This Agreement is entered into as of the date of the City Council Award and is executed in at least two (2) original copies, one of which is to be delivered to the Contractor and one to the Owner.

Attn: \_\_\_\_\_, President

Contractor's Name: Thayer Power & Communications Line Construction Co., LLC.

Contractor's Address: 7400 Market Road, Fairview, PA 16415

Signature:

Date:

Print Name:

Attn: \_\_\_\_\_ Mayor

District Name: City of Charlevoix

District Address: 210 State St. Charlevoix, Michigan 49720

Signature:

Date:

Print Name:

Attested to:

Attn: \_\_\_\_\_ City Clerk

District Name: City of Charlevoix

District Address: 210 State St. Charlevoix, Michigan 49720

Signature:

Date:

Print Name:

**Included Documents List Acknowledgement**

<b>Document Name</b>	<b>Description</b>	<b>Number of Pages</b>	<b>Document Date</b>	<b>Acknowledgement Initials</b>
Issued RFP for Fiber Optic Cable Installation	Details of City Request	16 + Appendix	7/24/14	
Addendum #1	Modifications of RFP	2	7/31/14	
Addendum #2	Modifications of RFP	2	8/14/14	
Vendor's Proposal including unit price tables	Description of Vendor's Response to the RFP	12	8/20/14	
Attached Award Spreadsheet	Unit prices and total units awarded at contract start	1	6/20/17	
Time Schedule for Work	To be mutually developed	1	Post Contract	
Time Schedule for Payments	Owner Policies and contract provisions	1	Post contract	

## **Amendment A**

### **Specific Responsibilities – Administration of the Contract**

The City of Charlevoix and its Technology Designer are primarily responsible for the administration of this Agreement. Thayer is responsible for knowing the requirements of this agreement and performing all actions required by this agreement and the included documents.

The Contractor is responsible for the timely initiation of all required notices, payment applications, testing, training and documentation required.

### **Planned Work and Payment Schedule (Subject to Revision and Correction by Owner)**

The City of Charlevoix must receive applications for payment with invoices at least 14 business days prior to one of its regularly scheduled council meetings in order for payment to be made shortly after a scheduled council meeting. The regular scheduled meetings of the council appear on the City of Charlevoix web site. Normally, these meetings occur on the 1<sup>st</sup> and 3<sup>rd</sup> Monday's of each month.

#### **See the installation schedule below.**

1<sup>st</sup> Progress payment after report of field study/design and finalized fiber optic components order prepared

2<sup>nd</sup> Progress payment after materials received by contractor; and certified inventory statement is received by owner.

3<sup>rd</sup> Progress payment after submission and approval of substantial completion

4<sup>th</sup> Payment after owner acceptance of the installation following full demonstrated performance of the system, and all corrections, adjustments are approved.

5<sup>th</sup> Final payment of all retainage (10% of contract) upon request, by the Contractor approximately 30 days following Owner acceptance of the system



**City of Charlevoix**

Second Estimate of schedule for the Installation and Testing of the Fiber Optic Cable

**Pre-contract Installation Schedule Table**

<b>Task/Check Point</b>	<b>Start/Finish</b>	<b>Single or Shared Task</b>
<b>Start of Work Meeting in Charlevoix</b>	<b>August 3, 2017</b>	<b>Both</b>
<b>Field Study of locations of installation; documented conditions and requirements</b>	<b>August 2015</b>	<b>Both</b>
<b>Finalize Fiber Components order; installation process document reviewed</b>	<b>August 2017 or sooner</b>	<b>Both</b>
<b>Approved Ordering of Fiber Components</b>	<b>August 2017</b>	<b>Approval of City and action of Contractor</b>
<b>Field work to make ready</b>	<b>August 2017</b>	<b>Contractor</b>
<b>Fiber Optic Cable</b>	<b>August 2017 – October 2017</b>	<b>Contractor</b>
<b>Testing of Installed Fiber Optic Cable and Components</b>	<b>September / October 2017</b>	<b>Contractor with City Participation</b>
<b>Complete Testing and Review with City</b>	<b>October 2017</b>	<b>Both</b>
<b>Certification of Acceptance</b>	<b>November 2017</b>	<b>City</b>
<b>Request by Contractor for release of Retainage</b>	<b>November - December</b>	<b>Contractor</b>
<b>Project Completion and full payment of Contractor</b>	<b>First Council Meeting December 2017</b>	<b>City</b>

# **CHARLEVOIX CITY COUNCIL**

## **All Other Actions and Requests**

**TITLE:** 2017 Asphalt Improvement Contract

**DATE:** July 31, 2017

**PRESENTED BY:** Patrick Elliott, DPW Supervisor

### **BACKGROUND:**

In the approved 2017/18 budget we have allocated a little over \$500,000.00 for street improvements.

This work generally consists of pulverizing the existing asphalt, regrading and compacting that material, and then laying two, 1.5" layers of asphalt for a total of 3" of asphalt. See the attached map of the specific roads/sections of roads that we are planning to complete. These roads were chosen due to their degraded condition and the amount of time and money that we have spent filling potholes etc. In the bid specifications we required a price for 2.5" of asphalt and a separate price for 3" of asphalt. I am recommending that we go with the 3" due to the improved driveability and longevity versus the 2.5".

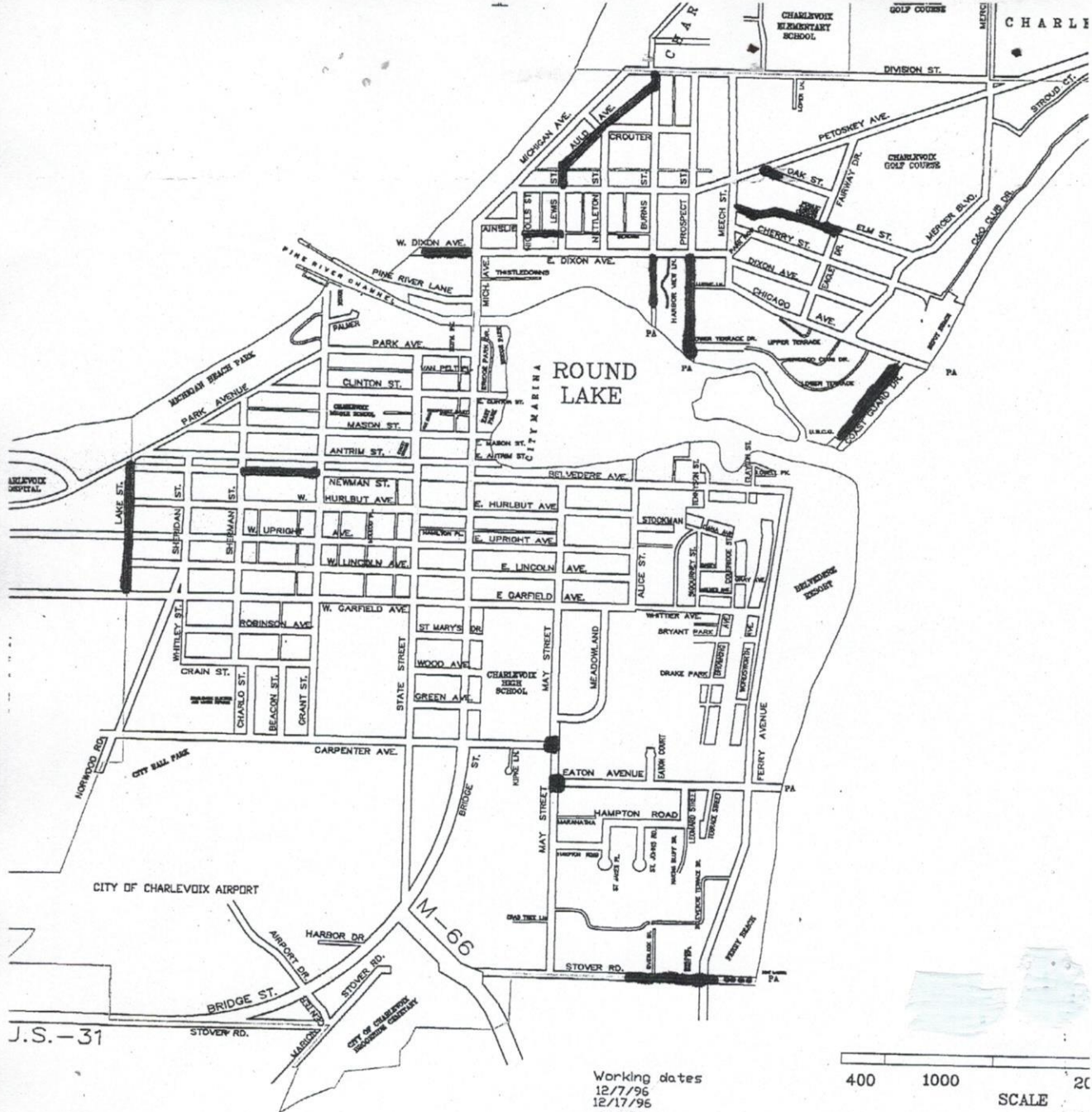
We created a bid specification and advertised for sealed bids for this work and on July 25th we opened two sealed bids. Please see attachment. As you can see the low bid from Rieth-Riley is well under budget at \$360,560.00. We have worked with Rieth-Riley on numerous projects in the past and have been pleased with their performance.

### **RECOMMENDATION:**

Motion to approve the proposal from Rieth-Riley as presented and enter into a contract with them for a total amount of \$360,560.

### **ATTACHMENTS:**

- ▣ 2017 HMA Improvements Map
- ▣ 2017 HMA Bid Tab





# CITY OF CHARLEVOIX

## PAVEMENT MAINTENANCE SERVICES

Bid Opening at City Hall

July 25, 2017 at 2pm

Bidder Name	Total Cost
Payne & Dolan Gaylord, MI	\$538,150 – 3" \$469,310 – 2.5"
Rieth-Riley Construction Charlevoix, MI	\$360,560 – 3" \$317,560 – 2.5"

# **CHARLEVOIX CITY COUNCIL**

## **Reports and Communications**

**TITLE:** City Manager Comments

**DATE:** July 31, 2017

### **ATTACHMENTS:**

- ▣ August Activities
- ▣ Special Meeting Notice

The following events are planned in public spaces during the month of August:

- August 4<sup>th</sup> – 30<sup>th</sup> Anniversary Celebration Harvest Barn – East Park
- August 12<sup>th</sup> – Charlevoix Waterfront Art Show – East Park (set up on August 11<sup>th</sup>)
- August 14<sup>th</sup>, 15<sup>th</sup>, 16 & 17<sup>th</sup> - Petunia Weeding
- August 17<sup>th</sup> – 19<sup>th</sup> – Sidewalk Sales
- August 18<sup>th</sup> & 19<sup>th</sup> – Salmon Shootout Tournament – Ferry Beach
- August 19<sup>th</sup> – Paddle 4 the Pool – Ferry Avenue Beach
- August 26<sup>th</sup> – Holecheck/Martin Wedding at Lake Michigan Beach Lighthouse
  
- Every Thursday – Farmer's Market in East Park
- June 22<sup>nd</sup> – Labor Day on Tuesdays & Thursdays - Yoga in East Park
- June 29<sup>th</sup> and every Thursday till August 24<sup>th</sup> – Summer Concert Series in Odmark Pavilion
- July 4<sup>th</sup> – August 22<sup>nd</sup> – City Band concert in Odmark Pavilion



## **PUBLIC NOTICE**

### **CHARLEVOIX CITY COUNCIL SPECIAL MEETING**

Mayor Kurtz has called a City Council Special Meeting for **Monday, July 31, 2017 at 4:00 p.m.** The meeting will be held in Council Chambers at City Hall, 210 State Street, Charlevoix, Michigan.

The purpose of this meeting will be for the Council to consider and act upon infrastructure expenditures and potential job description changes in the Water and Wastewater Department.

Joyce M. Golding, City Clerk

07/19/2017 2pm

*The City of Charlevoix will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon one week notice to the City of Charlevoix. Individuals with disabilities requiring auxiliary aids of services should contact the City of Charlevoix Clerk's Office in writing or calling the following: City Clerk, 210 State Street, Charlevoix, MI 49720 (231) 547-3250*