

**SUMMARY REPORT TO THE CITY MANAGER**  
for Council Meeting of June 12, 2006

**SUBJECT:** LICENSE AGREEMENT FOR GRAND CURVE TRAIL

**INITIATED BY:** City of Midland Engineering Department

**RESOLUTION SUMMARY:** This resolution accepts a License Agreement between the City of Midland and The Dow Chemical Company for the installation and maintenance of a paved pathway on Dow property.

**ITEMS ATTACHED:**

1. Cover Letter
2. Resolution
3. License Agreement
4. Location Maps

**CITY COUNCIL ACTION:** 3/5 vote required to approve resolution

**SUBMITTED BY:** Brian P. McManus, City Engineer *BPM*



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DATE: June 8, 2006

TO: Karl S. Tomion, City Manager

FROM: Brian P. McManus, City Engineer *BPm*

RE: License Agreement with The Dow Chemical Company

Attached hereto is a License Agreement from The Dow Chemical Company to the City of Midland for the construction of a non-motorized paved pathway across property owned by Dow. The project is an extension of the Grand Curve Trail constructed between State Street and Washington Street last year. This License Agreement covers two separate locations for the proposed trail. One runs along the baseball stadium site on the east side of State Street from Main Street to Buttles Street and along the south side of Buttles Street from State Street to Lyon Street. The other runs south of Patrick Street from east of Swede Avenue to one half mile east of Waldo Avenue. This trail is proposed to run north from the terminus on Patrick Road into Stratford Woods Park in the future.

This trail will be constructed by MDOT and will extend from the end of last years Grand Curve Trail project at Washington Street and along James Savage Road to Saginaw Road and under the US-10 BR overpass and easterly near US-10 BR to the Saginaw Road exit, then along the north side of Patrick Road to east of Swede, where it intersects Dow's property. The trail will then meander across the Dow parcel between Patrick Road and US-10 BR to a point one half mile east of Waldo Avenue. Berms and landscaping are currently being installed along this route by MDOT, as part of the highway reconstruction project.

This License Agreement will allow MDOT to construct the trail on Dow property on behalf of the City of Midland. The City will maintain the trail and landscaping following construction by MDOT.

The License Agreement was prepared by The Dow Chemical Company and reviewed and approved by the City Attorney.

DOWCHEM5.LTR  
DHF



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BY COUNCILMAN

RESOLVED, that the attached License Agreement from The Dow Chemical Company, to the City of Midland, for a proposed non-motorized paved pathway across property owned by The Dow Chemical Company along the east side of State Street from Main Street to Buttles Street; the south side of Buttles Street from State Street to Lyon Street and the south side of Patrick Road from east of Swede Avenue to one half mile east of Waldo Avenue, is hereby accepted and that the Mayor and City Clerk are authorized to sign said agreement.

YEAS:

NAYS:

ABSENT:

I, Selina Tisdale, City Clerk, City of Midland, Counties of Bay and Midland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by a        yea vote of all the Councilmen present at a regular meeting of the City Council held Monday, June 12, 2006.

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Selina Tisdale, City Clerk

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DHF

## LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between THE DOW CHEMICAL COMPANY, a Delaware corporation, having its Michigan Operations Real Estate Office at 47 Building, Midland, Michigan 48667 (hereinafter the "LICENSOR") and the CITY OF MIDLAND, a Michigan municipal corporation of 333 W. Ellsworth Street, Midland, Michigan 48640 (hereinafter the "LICENSEE").

### RECITALS

The Licensor is the titleholder of property (the "Property") legally described as follows:

The North ½ of the Section 23, T. 14 N., R. 2 E., City of Midland, Midland County, Michigan, lying North of the North line of Business Route US-10 (M-20), except the West 400 feet thereof; also except beginning 33 feet West and 33 feet South of the Northeast Corner of Section 23, thence West 29 feet; thence Southeast 41 feet; thence North 29 feet, to the Point of Beginning;

ALSO;

The Northwest ¼ of Section 24, T. 14 N., R. 2 E., City of Midland, Midland County, Michigan, lying North of a line being 90 feet North of the survey line of Business Route US-10 (M-20); except the westbound off ramp, lying 78 feet Northeast and 94 feet Southwest of the survey line of said west bound off ramp; also except beginning 33 feet East and 33 feet South from the Northwest Corner of said Section 24; thence East 16 feet; thence Southwest 22.6 feet; thence North 16 feet, to the Point of Beginning;

ALSO;

The Westerly 30 feet of Lot 9 in Block 28 and the Westerly 30 feet of Lots 4 and 5 in Block 68 and the Westerly 30 feet of Lots 4 and 5 of Block 70 and the Westerly 30 feet of vacated Larkin Street and Ellsworth Street, lying easterly from the Easterly right of way line of State Street, all in Larkins Addition to the City of Midland, Michigan;

ALSO;

The Northerly 30 feet of Blocks 70, 103, 104, 105 and 106 and the Northerly 30 feet of vacated Mill Street, Haley Street, Fournie Street and Patrick Road, lying Southerly the South right of way line of Buttles Street, all in Larkins Addition to the City of Midland, Michigan.

The Licensor desires to provide Licensee a License over and across said Property which will permit the Licensee to locate and maintain a public paved trail and landscaping (hereinafter the "IMPROVEMENTS") on a portion of Licensor's property, and the Licensee desires to receive such a License.

NOW THEREFORE, in consideration of the mutual covenants and promises herein, but for no monetary compensation (this License being intended as a charitable contribution), the Licensor and Licensee agree as follows:

- a. The Licensor does hereby confer upon the Licensee, its successors and assigns, a non-exclusive License with respect to the Property, to construct, install, mark, inspect, operate, repair, use, alter, improve, replace, reconstruct, remove and maintain Licensee's Improvements, subject to all the terms and conditions of this instrument.
- b. Licensee's rights herein include the right of ingress and egress across the Property to and from the Improvements (but only to the extent that access via the Licensee's paved trail is insufficient), using established lanes or driveways when practicable.
- c. The Licensee hereby agrees to indemnify, defend and hold harmless the Licensor with respect to any and all liability for personal injuries to any person whatsoever, damage to the property of any person whatsoever, or for loss of life or property of any person whatsoever, resulting from, or in any way connected with, (a) Licensee's activities under this instrument, or (b) the use of the area affected by the Improvements by, or presence or activities in such area of, any person whatsoever, whether or not related to any condition of such area or of the Improvements, except liability for personal injuries, property damage, or loss of life or property caused solely by the

negligence of the Licensor. To secure, but not to limit, the Licensee's obligations under this paragraph, the Licensee shall, at all times, carry good and sufficient insurance applicable to the obligations of this paragraph.

- d. This License is for an initial term of ten (10) years, and thereafter for so long as neither party has terminated this License. Licensor may not terminate this License during the initial term except as provided in the following paragraph.
- e. After installation of the Improvements, upon request by the Licensee accompanied by a legal description of the centerline of Licensee's paved trail, the parties will prepare and execute an easement for the Improvements (upon terms mutually acceptable to the parties), whereupon this License shall terminate.
- f. The Licensee agrees and acknowledges that the Licensor or its successors or assigns may, at any time and from time to time, develop or improve any or all of the Property, including but not limited to the placement of buildings and structures, vehicular or pedestrian crossings, utilities, or other features over, under or across the Property. If such activities of Licensor, its successors or assigns require relocation of all or a portion of the Licensee's Improvements:

- (i) Any loss of landscaping shall be without recourse, except as otherwise provided herein.
- (ii) Any necessary relocation of the paved trail within the Property will be addressed as provided herein and in paragraph (iii).

(a) Relocation outside the Property: If Licensor's activities require relocation of the paved trail but preclude relocating the trail on the Property, and if, under such circumstance, Licensor (or its successors or assigns, as applicable) owns and is willing to make available suitable undeveloped contiguous, adjacent or reasonably proximate property to which the paved trail can be relocated, the cost of such relocation shall be addressed as provided in paragraph (iii) and the Licensor shall provide the Licensee a License or easement allowing such relocation, on terms mutually acceptable to the parties. Licensor shall select the specific boundaries of the area for such relocation in Licensor's sole discretion but after consultation with Licensee. Any installation of landscaping in such areas outside the Property shall be subject to the Licensor's approval, which may be withheld or conditioned in the Licensor's sole discretion.

(b) Relocation within the Property: The cost of any relocation of the paved trail required by Licensor shall be borne as provided in paragraph (iii) and the Grantee shall provide the Grantor "as built" drawings of the relocated trail. Any installation of landscaping in the immediate vicinity of the relocated trail shall be subject to the Licensor's approval, which shall not be unreasonably withheld or conditioned.

- (iii) The cost of demolition and removal of existing Improvements (trail and landscaping) shall be borne by Licensor or its successors or assigns, as applicable. The reasonable cost of materials, supplies and labor for relocation of the paved trail (but not the cost of landscaping, the replacement of which (if allowed), shall in any case be at Licensee's expense) shall be borne as follows:

Years elapsed since date of this instrument	Percentage of cost borne by Licensor (or its successors or assigns, as applicable)	Percentage of cost borne by Licensee
0 to <5	100	0
5 to <10	75	25
10 to <15	50	50
15 to <20	25	75
20 or more	0	100

(iv) Licensee shall restore in a good and workmanlike manner any portion of the Property that may be disturbed by its work, to substantially the same condition (other than the Improvements) that existed prior to the Licensee beginning such work. The Licensee will provide to Licensor "As Built" drawings of the Improvements.

g. This License shall not be amended orally, but only by an agreement in writing signed by all parties then having an interest in the Property. Any such amendment shall not be binding upon any person or entity not a party to the amendment until the amendment has been recorded with the applicable County Register of Deeds.

h. It is expressly agreed by the Licensor and Licensee that a limited use of the License and the rights hereby granted shall not prevent the Licensee from later making full use of said License and the rights hereby granted to the extent herein authorized. The repair, removal and/or replacement of the Improvements located on the Licensor's Parcel will not void, make voidable, or in any way affect the validity of the License or Licensee's rights under this Agreement.

i. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together or separately shall constitute but one agreement.

j. All notices concerning this agreement shall be mailed to the following:

Licensor: The Dow Chemical Company  
Real Estate Department  
2030 Dow Center  
Midland, Michigan 48674

Licensee: The City of Midland  
333 W. Ellsworth Street  
Midland, Michigan 48640

IN WITNESS WHEREOF, the parties have executed this License Agreement on the date and year indicated herein.

IN THE PRESENCE OF:

LICENSOR:

THE DOW CHEMICAL COMPANY,  
a Delaware corporation

By: \_\_\_\_\_

Its:

STATE OF MICHIGAN )  
                                  ss  
COUNTY OF MIDLAND )

On this \_\_\_\_ day of \_\_\_\_\_, 2006, before me, a notary public in and for said County, personally appeared \_\_\_\_\_, known to me to be the person who executed the within instrument on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public  
County, Michigan  
My Commission Expires:

LICENSEE:

CITY OF MIDLAND,  
a Michigan municipal corporation

\_\_\_\_\_  
By: Bruce A. Johnson  
Its: Mayor

And

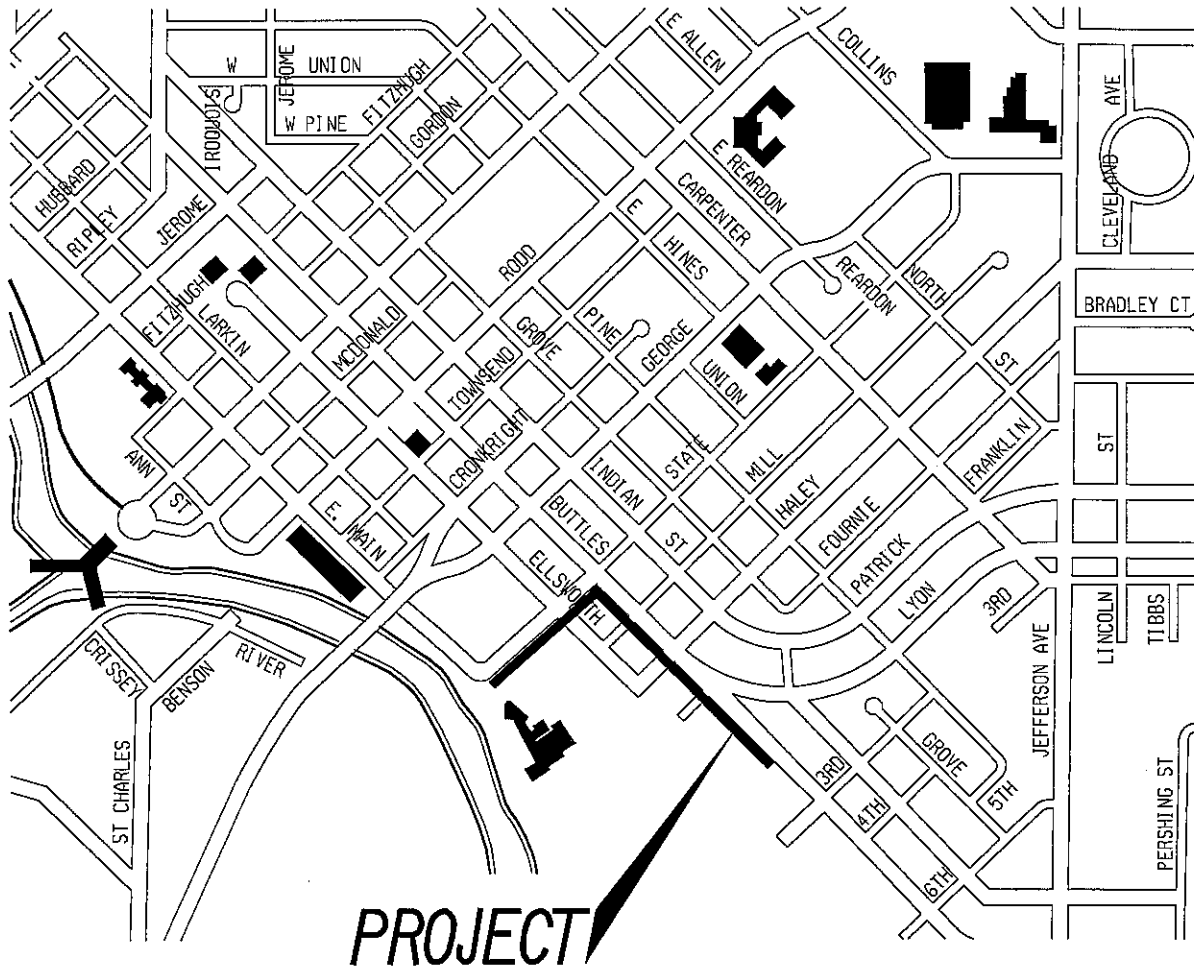
\_\_\_\_\_  
By: Selina Tisdale  
Its: City Clerk

STATE OF MICHIGAN )  
COUNTY OF MIDLAND) <sup>ss</sup>

On this \_\_\_\_\_ day of \_\_\_\_\_ 2006, before me personally appeared Bruce A. Johnson and Selina Tisdale to me personally known, who being by me sworn, did each for himself and herself say that they are respectively the Mayor and City Clerk of the City of Midland, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its City Council; and said Bruce A. Johnson and Selina Tisdale acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
County, Michigan  
My commission expires:





**PROJECT**

**PROPOSED GRAND CURVE TRAIL  
LICENSE AGREEMENT AREA**