Agenda
Regular Meeting of the City Commission

City of Kalamazoo

Monday, April 3, 2017 7:00 PM

City Commission Chambers - 241 W. South Street

A. CALL TO ORDER/ROLL CALL

B. OPENING CEREMONY

1. Invocation: **Reverend Sarah Schmidt-Lee, First Congregational Church**
2. Pledge of Allegiance
3. Introduction of Guests
4. Proclamations
   a. National Service Recognition Day
   b. Child Abuse Prevention Month
   c. Sexual Assault Awareness Month

C. ADOPTION OF FORMAL AGENDA

D. COMMUNICATIONS

1. Calendar of Upcoming Meetings

E. PUBLIC HEARINGS

F. CONSENT AGENDA

(Action: Motion to approve Items "1-16" and authorize the City Manager to sign all documents on behalf of the City)

1. Approval of a one-year contract with Lakeland Asphalt Corporation for the purchase of 2,000 tons of asphalt patching material in the amount of $160,000.00.

2. Approval of contracts with ice control salt suppliers that are awarded bids by the State of Michigan for the 2017-2018 winter season requirements in an amount not to exceed $450,000.

3. Approval of a one year contract for property maintenance with Natural Landscapes for mowing Mountain Home and Riverside cemeteries in the amount of $124,930.

4. Approval of a contract with the Michigan Department of Transportation in the amount of $505,413 and a purchase order with Carrier and Gable in the amount of $102,809 for the improvement of traffic signals along North Drake Road and South Burdick Street and the installation of bike lanes on South Burdick Street.

5. Approval of a contract with the Michigan Department of Transportation for the Portage Road Improvement Project in the amount of $587,001.

6. Approval of an agreement between the City of Kalamazoo Building Authority and Traffic & Safety Control Systems, Inc. for the Parking Access and Revenue Control Upgrade Project in the amount of $741,283.77.

7. Approval of a change order in the amount of $40,000 for The Sweeney Group to continue fundraising efforts for Bronson Park Capital Campaign.

8. First reading of two ordinances amending various section of the Kalamazoo City Code to eliminate the seatbelt requirement for quadricycles and to permit the possession and consumption of alcoholic beverages by passengers on quadricycles.

9. Adoption of a RESOLUTION that establishes a $250 fee for vehicles seized pursuant to M.C.L.. § 333. 7521, if the owner requests the release of the seized vehicle.

10. Adoption of a RESOLUTION to a rescind and remove restrictions, covenants and development standards for Davis Creek Business Park.

11. Authorization for the City Manager to execute a Bilateral Permit with Merit Network, Inc. pursuant to the Metropolitan Extension Telecommunications Right of Way Oversight (METRO) Act so as to permit the placement of fiber optic telecommunication lines within the City.

12. Approval and acceptance of an easement from the Kalamazoo County Land Bank for an operations and maintenance access trail to the Spring Valley Syphon.

13. Approval of Non-Motorized Path Easement Agreements for the Downtown Kalamazoo River Valley Trail with the following entities: the Board of Trustees for Western Michigan University; the Board of Trustees for Kalamazoo Community College; Downtown Tomorrow Inc.; West Michigan Cancer Center; Kalamazoo County Community Mental Health Authority; and Number 39, LLC.

14. Approval of a Buy/Sell Agreement with Dylan Wright for the purchase of property located at 1007 East Alcott Street.

15. Approval of the Mayor's reappointments to the following boards and commissions:

    - the reappointment of Dan DeMent to the Retirement and Perprtual Care Investment Committees for a term expiring on March 31, 2020. This recommendation includes a request to waive City Commission Rule 12e regarding term limits.

    - the reappointment of Randy Eberts to the Retirement and Perprtual Care Investment Committees for a term expiring on March 31, 2020. This recommendation includes a request to waive City Commission Rule 12e regarding term limits.

- the reappointment of Robert Salisbury to the Retirement and Perprtual Care Investment Committees for a term expiring on March 31, 2020. This recommendation includes a request to waive City Commission Rule 12e regarding term limits.

- the reappointment of James Coss to the Planning Commission for a term expiring on March 31, 2020.

16. Approval of the minutes from the City Commission meetings on March 20, 2017.

G. REGULAR AGENDA

1. Adoption of an ORDINANCE to amend Ordinance No. 1947 to provide for the use of a letter of credit, surety bond or insurance policy to fund the Bond Reserve Account for the 2017 Revenue Bonds of the Water Supply System. **(Action: Motion to adopt the ordinance)**

2. Approval of a Purchase Agreement for the sale of Parking Ramp No. 4 to 306 Parking LLC. **(Action: Motion to hold until April 17, 2017)**

3. It is recommended that the City Commission accept $883,000 of Foundation for Excellence (FFE) funding for the following 2017 FFE aspirational projects:

Supervised Playground Program	$ 83,000
All Things Possible	$ 50,000
Summer Youth Employment	$750,000

It is further recommended that the City Commission amend the FY 2017 budget in the following fashion:

- receive $883,000 into the City's new FFE accounting Fund;
- transfer $883,000 from the FFE accounting Fund to the City's General Fund;
- authorize an increase of $883,000 of expenditure appropriations in the FY 2017 General Fund Parks and Recreation Department.

(Action: Motion to accept the FFE funding and approve the budget amendment)

H. REPORTS AND LEGISLATION

1. City Manager's Report

I. UNFINISHED BUSINESS

J. POLICY ITEMS

K. NEW BUSINESS

L. CITIZEN COMMENTS

M. MISCELLANEOUS COMMENTS AND CONCERNS BY COMMISSIONERS

N. CLOSED SESSION

O. ADJOURNMENT

ADDITIONAL INFORMATION

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Questions regarding agenda items may be answered prior to the meeting by contacting the City Manager's Office at 269.337.8047.

Persons with disabilities who need accommodations to effectively participate in City Commission meetings should contact the City Clerk's Office at 337-8792 a week in advance to request mobility, visual, hearing or other assistance.

Agendas for the regular meetings of the Kalamazoo City Commission are available on the Internet at: www.kalamazoocity.org

The Kalamazoo City Commission business meetings are held on the first and third Mondays at 7:00 p.m. and are shown live on the Public Media Network (channel 190 for Charter customers, channel 99 for U-Verse customers). Business meetings are also web streamed live on the City's YouTube channel at https://goo.gl/Q6DW37. Public Media Network rebroadcasts these meetings on Tuesdays at 8:00 a.m., Wednesdays, at 1:00 a.m., and Thursdays at 3:00 p.m. Recorded meetings are also available on-demand on the YouTube channel.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: Scott A. Borling, City Clerk

PREPARED BY: Shelby Moss, Deputy City Clerk

DATE: 3/8/2017

SUBJECT: Calendar of Upcoming Meetings

INFORMATIONAL ITEMS

Attached is the calendar of upcoming meetings of the City Commission's advisory boards, commissions, and committees.

ATTACHMENTS:

	Type	Description
	Meeting Schedule	20170403 Calendar of Meetings

Calendar of Upcoming Meetings

City of Kalamazoo

City Commission (next 30 days)

Regular Business Meetings – 7:00 p.m. in the City Commission Chambers

April 17th and May 1st

Regular Neighborhood Meetings – 6:00 p.m. in the Community Room at City Hall

April 17, 2017

Work Sessions

The City Commission will meet on Monday, April 10, 2017 at 6:00 p.m., in the City Commission Chambers at City Hall. The purpose will be to: 1) ensure understanding and alignment around the City's approach to Foundation for Excellence aspirational projects for 2017, 2018, and beyond; and 2) preview and discuss examples of potential dashboards and metrics for FFE projects to drive impact and accountability.

Advisory Boards, Commissions and Committees (next two weeks)

The **Parks and Recreation Advisory Board** will meet on Tuesday, April 4, 2017 at 5:30 p.m., in the Parks and Recreation Community Room at Mayors' Riverfront Park, located at 251 Mills Street.

The **Kalamazoo Historic Preservation Commission** will meet on Tuesday, April 11, 2017 at 7:00 p.m., in the Community Room at City Hall.

The **Traffic Board** will meet on Thursday, April 13, 2017 at 2:00 p.m., in the Public Services Conference Room, located at 415 Stockbridge Avenue.

The **Community Development Act Advisory Committee** will meet on Thursday, April 13, 2017 at 6:30 p.m., in the Community Room at City Hall.

The **Planning Commission** will meet on Thursday, April 13, 2017 at 7:00 p.m., in the Third Floor Conference Room at City Hall.

The **Zoning Board of Appeals** will meet on Thursday, April 13, 2017 at 7:00 p.m., in the in the City Commission Chambers at City Hall.

The **Downtown Development Authority** will meet on Monday, April 17, 2017 at 3:00 p.m., in the Community Room at City Hall.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Teresa T. Johnson, Public Services Deputy Director

PREPARED BY: Chris Pratt, Procurement Coordinator

DATE: 3/16/2017

SUBJECT: Purchase of Asphalt Patching Materials

RECOMMENDATION

It is recommended that the City Commission approve a one (1) year contract with Lakeland Asphalt Corporation for the purchase of 2,000 tons of asphalt patching material in the amount of $160,000.00.

BACKGROUND

For several years, the Public Services Department has purchased a particular asphalt patching product from various vendors. This product has been known industry wide as the premiere product for patching potholes in terms of ease of application and longevity. This material is also used to repair utility cuts during the winter months when permanent material is not available. It has proven to be an effective material to maintain our roadways, particularly through the snow and ice season.

On January 20, the Purchasing Division solicited bids for the purchase of Asphalt Patching Materials. The low responsible and responsive bid to our specifications was received from Lakeland Asphalt. This bid provided for a one year contract with four possible contract extensions.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funds were included within the various Major and Local Street repair budgets for this purchase.

ALTERNATIVES

The City could choose not to enter into this contract; rebid the contract; or experiment with another unproven material. However, once the snow and ice season has arrived, it will be imperative that reliable materials are available to repair roadways damaged throughout the freeze/thaw cycles experienced in our area as well as

temporarily repairing utility cuts.

ATTACHMENTS:

	Type	Description
🗋	Aerial Photo	Bid Results Summary

BID RESULTS SUMMARY

PROJECT: Asphalt Patching Materials

DATE: March 21, 2017

BIDDERS SOLICITED: 16

BIDDERS RESPONDED: 3

MBE/WBE BIDS SOLICITED: 3

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 745-67-010

MBE/WBE AWARDED: No

ISSUE DATE: January 18, 2017

BID OPENING: February 15, 2017

APPROVAL REQUIRED: City Commission

FUNDED BY: City

BIDDERS	AMOUNT BID	LOCATION
Lakeland Asphalt Corp.	$160,000.00	Battle Creek, MI
Unique Paving Materials	$218,360.00	Cleveland, OH
Reith Riley	$300,000.00	County

Purchasing procedures have been followed and City Attorney has reviewed as to form.

Melissa Fuller

Melissa Fuller
Deputy Director of Mgmt Services/
Purchasing Agent

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Thomas C. Skrobola, Management Services Director / CFO

PREPARED BY: Patricia Vargas, Management Services Coordinator

DATE: 3/21/2017

SUBJECT: Cooperative Contract for 2017 - 2018 Winter Season Ice Control

RECOMMENDATION

It is recommended that the City Commission authorize the City Manager to enter into contracts with ice control salt suppliers as awarded by the State of Michigan for the 2017-2018 winter season requirements in an amount not to exceed $450,000.

BACKGROUND

Each year the State of Michigan solicits bids for ice control salt. The City has traditionally participated with the State as the volume of salt purchased through this cooperative effort results in the lowest possible cost of salt per ton.

The State of Michigan has moved to an online requisition system to procure ice control. This requisition serves as the agreement between the City and the State of Michigan. If we do not complete the requisition by the specified date we will not be allowed to participate in the cooperative purchase contract. By completing the requisition and participating in the contract, the City is making a commitment to purchase at least 7,000 tons of road salt through the winter season. Once we receive bid results, paperwork will be forwarded to the City Manager for purchase approval.

City staff typically uses between 6,000 to 7,000 tons of salt per winter season depending on weather conditions. Any salt not used is stockpiled for use during the next winter season. If additional salt is needed it can be purchased under this contract as well.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

The City's participation in the State's cooperative bidding contract will ensure the best pricing for road salt for

the 2017-2018 winter season. When the bid results are obtained from the State, appropriate paperwork will be submitted for the purchase of a minimum of 7,000 tons of road salt. Funds are available within the Major and Local Street Maintenance budgets for this purchase in the amount of $450,000.00.

ALTERNATIVES

The City of Kalamazoo could individually solicit bids for the salt at a higher cost per ton. Staff does not recommend this alternative at this time.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Teresa T. Johnson, Deputy Public Services Director

PREPARED BY: Wendy Burlingham, Administrative Support Manager

DATE: 3/16/2017

SUBJECT: 2017 Property Maintenance Contract - 988-52-039.0

RECOMMENDATION

It is recommended that the City Commission approve a one year contract for property maintenance with Natural Landscapes, of Rockford, MI for mowing Mountain Home and Riverside cemeteries in the amount of $124,930.

BACKGROUND

Since 2005 the City of Kalamazoo has outsourced mowing of City properties, nuisance violations, cemeteries and parks. At that time, contractor prices were lower than the City's union employees performing the work. Outsourcing continues to be a cost savings for the City as well as a job creation opportunity for local residents.

In March 2017, the Purchasing Division solicited bids for these services. Natural Landscape was the low responsive bidder for all portions of the bid. However, they are only interested in the cemeteries portion of the contract. Additional portions of the contract will be awarded separately.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

Funding is included in the 2017 operating budget for this contract.

ALTERNATIVES

The Commission could deny this request, however that is not recommended as it would impact the appearance of the cemeteries and put the City in violation of its own ordinances.

ATTACHMENTS:

Type	Description
Aerial Photo	Bid Results Summary

BID RESULTS SUMMARY

PROJECT: Property Maintenance Services

DATE: March 21, 2017

BIDDERS SOLICITED: 62

BIDDERS RESPONDED: 11

MBE/WBE BIDS SOLICITED: 14

MBE/WBE BIDDERS RESPONDED: 2

BID REFERENCE NO: 988-52-039.0

MBE/WBE AWARDED: No

ISSUE DATE: February 8, 2017

BID OPENING: March 8, 2017

APPROVAL REQUIRED: City Commission
City Manager and Purchasing Agent

FUNDED BY: City

BIDDERS	AMOUNT BID	CONTRACT	LOCATION
Natural Landscapes, LLC (1)	$214,269.00	$124,930.00	Rockford, MI
US Lawns (2)	$347,872.00	$67,410.00	County
Earthworks (3)	$107,910.00	$22,522.00	County
J & H Property Maintenance (4)	$358,885.00	$19,573.00	County
*Stap Brothers Lawn & Landscaping)	$36,200.00		County
*Northern Landscaping	$65,000.00		County

Notes
(1) Recommending award of Item 3 – Cemeteries
(2) Recommending award of Items 1 and 2 – Nuisance Mowing and 26 Frequency Mowing
(3) Recommending award of Item 2 – 13 Frequency Mowing
(4) Recommending award of Item 2 – 6 Frequency Mowing

*Did not Bid on all Items. Was not low bidder on items bid.

Purchasing procedures have been followed and City Attorney has reviewed as to form.

Melissa Fuller
Deputy Director of Mgmt Services/
Purchasing Agent

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE, Public Services Director

PREPARED BY: Jim Hoekstra, PE, Traffic Engineer

DATE: 3/22/2017

SUBJECT: Approve Contract No 17-5023 with the Michigan Department of Transportation for North Drake and South Burdick Street Traffic Signal Upgrades Projects and South Burdick Bike Lanes

RECOMMENDATION

It is recommended that the City Commission approve the contract with the Michigan Department of Transportation (MDOT) in the amount of $505,413 and the purchase order with Carrier and Gable in the amount of $102,809 for the improvement of traffic signals along North Drake Road and South Burdick Street and the installation of bike lanes on South Burdick Street, and authorize the City Manager to sign all documents.

BACKGROUND

In 2012, Public Services identified an improvement project for the three traffic signals along Drake Road from West Main Street to Grand Prairie Avenue. This project would include replacement of existing traffic signals with new infrastructure. Public Services also identified an improvement project for eight traffic signals along Burdick Street from Alcott Street to South Street. This project would primarily include new electronic and detection equipment at the signalized intersections and installation of fiber optic interconnect which would improve efficiency of operations, maintenance, and coordination of the signals.

Public Services applied for and received $930,187 in federal Congestion Mitigation and Air Quality (CMAQ) funding and $60,000 in federal Transportation Alternatives Program (TAP) funding through our local Metropolitan Planning Organization, Kalamazoo Area Transportation Study (KATS). These grants are expected to cover 66% of the as-bid construction cost with the City being responsible for 33% of the as-bid construction costs, engineering, and contingency. Public Services designed the project with a consultant and submitted the project for bidding through the MDOT Local Agency Programs (LAP). Through the LAP, MDOT will handle the bidding, awarding, and contractor payments. The City of Kalamazoo will be responsible for the on-site inspection and verifying the contractor quantities. MDOT will bill the City for the local share of the as-bid amount and any administrative fees.

Included in this project would be the installation of non-motorized facilities as identified by the City's non-motorized plan. Bike lanes are planned on South Burdick Street from Cork Street to Crosstown Parkway and shared lane markings and signage is planned from Crosstown Parkway to Lovell Street.

As Part of this project the City will be purchasing some traffic signal equipment directly from the supplier utilizing a trade in/trade up program. The City has old equipment in stock which we are able to trade in to the supplier for a discount. By doing this we also avoid markup fees that a contractor would normally pass along to the project. We have utilized this method for past projects and have discovered it results in cost savings to the City and recycles outdated equipment.

Carrier and Gable, Inc. is the only supplier for the State of Michigan for these traffic signal components. This equipment meets all State of Michigan specifications and is typical for what is in use throughout the City on all other traffic signals.

COMMUNITY RESOURCES CONSULTED

A public meeting was held on September 29 to discuss the project and obtain public input that could be accommodated in design of the project. Public input included concerns about bus stop locations, loss of parking, and the proposed bike routes. City staff took the input and made some design changes to accommodate citizen concerns. Some changes included: further discussion with Metro Transit on bus stop locations and redesign to allow parking in the business district on the east side of Burdick Street from Alcott Street to Stockbridge Avenue.

A follow up public meeting occurred on October 26 to update citizens on changes to the plans based upon prior input as well as to further explain the significance of the adopted Non-Motorized Plan and the safety impacts of the project to all roadway users.

FISCAL IMPACT

Public Services will be requesting a purchase order with MDOT in the amount of $505,413 once the contract is approved. A purchase order with Carrier and Gable for $102,809 is also requested for the purchase of equipment for the project. In 2016, the City approved an agreement with Hubbell, Roth, & Clark, Inc. to provide engineering design and construction oversight of the project. Below is an estimated break down of funding including contingency as proposed in the 2016 and 2017 Major Street Budgets.

Funding	
FY 2016 Major Street Budget	$ 29,522
FY 2017 Major Street Budget	705,000
Federal Highway Administration Trust Fund	990,187
Total Funding	$1,724,709
Cost	
Engineering and Contingency	$ 126,300
City Purchase of equipment	102,809
Construction	1,495,600
Total Cost	$1,724,709

ALTERNATIVES

The alternative of not approving the contract with MDOT and purchase order with Carrier and Gable is not recommended as upgrades are anticipated to improve efficiency and reduce emissions and a major portion of the cost is to be funded through federal highway trust fund.

ATTACHMENTS:

Type	Description
Report	HRC Presentation
Contract	MDOT Contract 17-5023

BURDICK STREET
(CORK TO CROSSTOWN PKWY)

Presented by:

Jesse Morgan, P.E. & Lia Michaels, P.E., PTOE

AGENDA

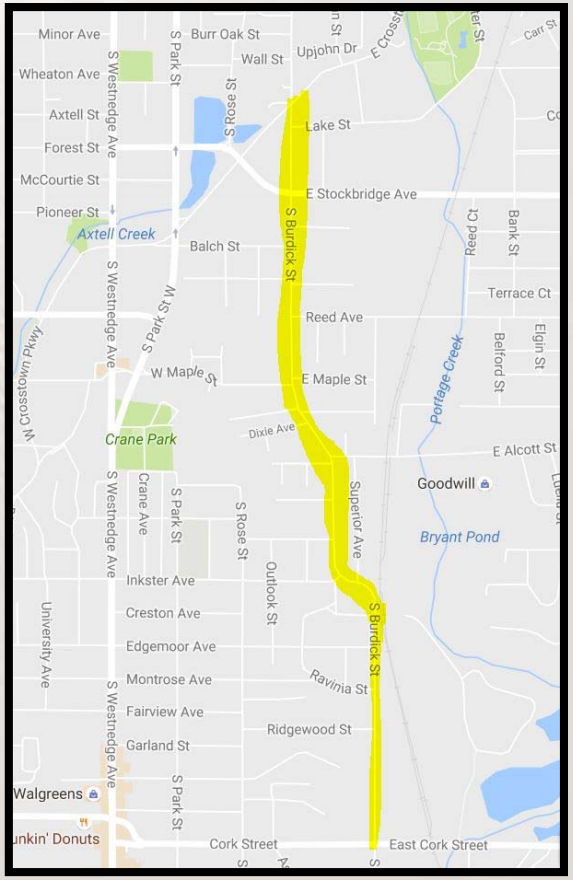
- Introductions
- Project Overview
- Guiding Documents and Principles
- Final Project Concept
- Resident Involvement Opportunities
- Questions/Discussion

INTRODUCTIONS

▪ Jim Hoekstra, PE	City of Kalamazoo
▪ Jesse Morgan, PE	Hubbell, Roth & Clark, Inc.
▪ Lia Michaels, PE, PTOE	Hubbell, Roth & Clark, Inc.
▪ Hailey Savola	Hubbell, Roth & Clark, Inc.

PROJECT LIMITS

- Cork to Lovell
  - Lane configuration changes from Cork St to Crosstown Pkwy



CONSTRUCTION

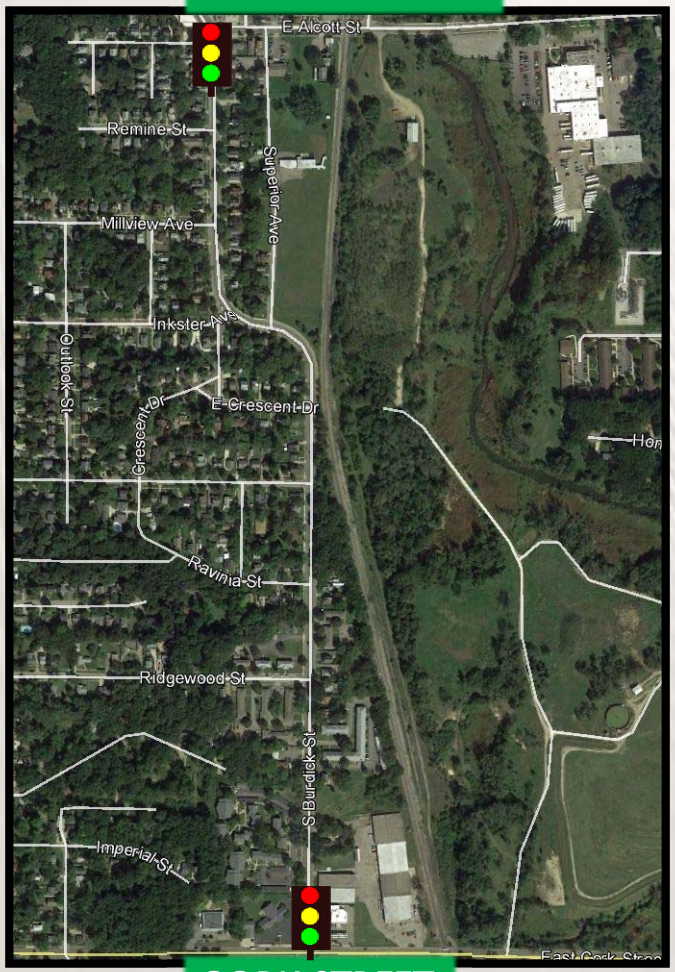
- 2017 construction season
- Seal Coat and Fog Seal
- Pavement Markings
- Minor Traffic Signal Upgrades
  - Stockbridge
  - Reed
  - Alcott

EXISTING CONDITIONS

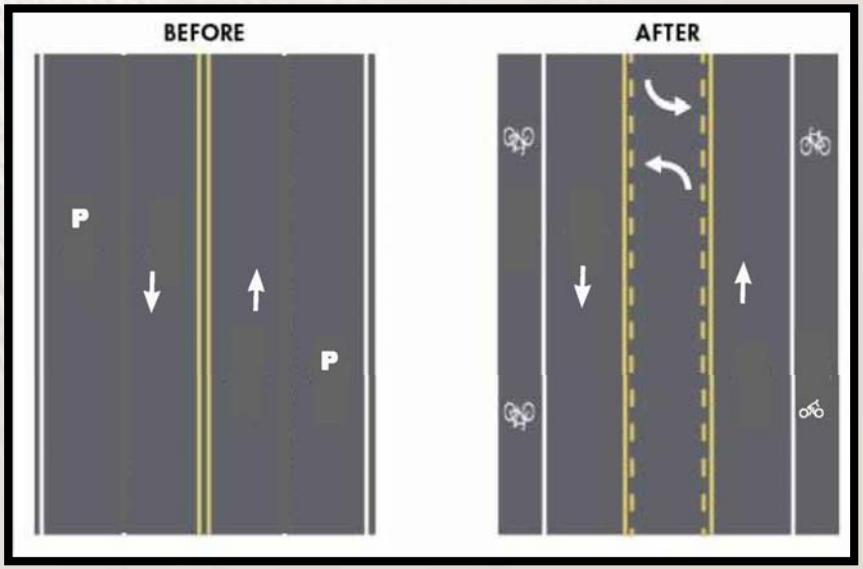
- Approx. 7,400 vehicles per day
- Parking allowed (both sides of road) with restrictions
- Roadway widths vary
  - 46 ft to 50 ft

CORK TO ALCOTT

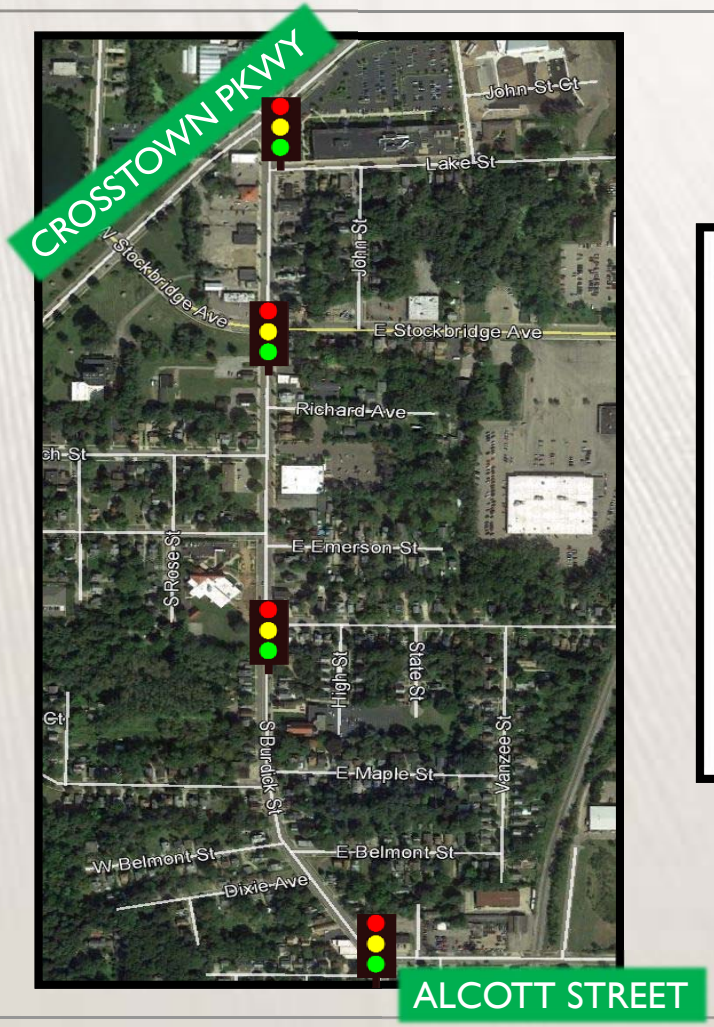
ALCOTT STREET

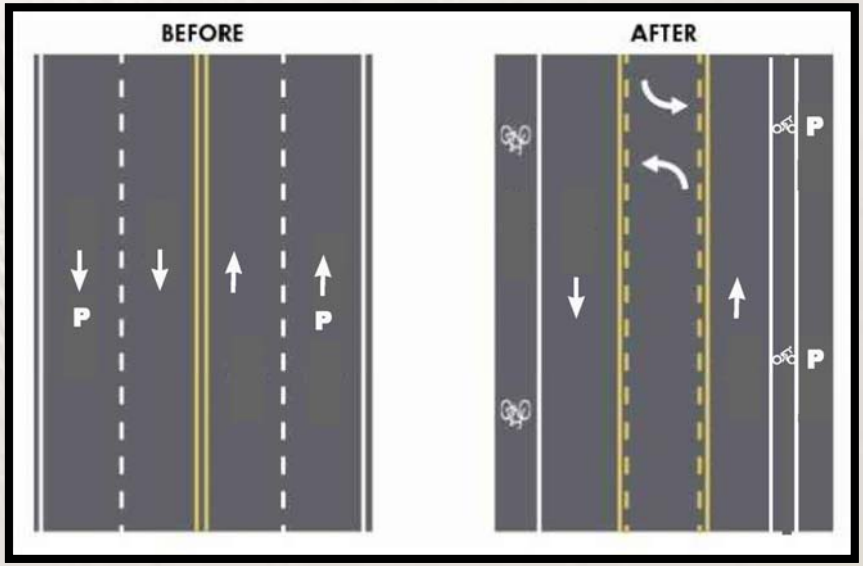


CORK STREET



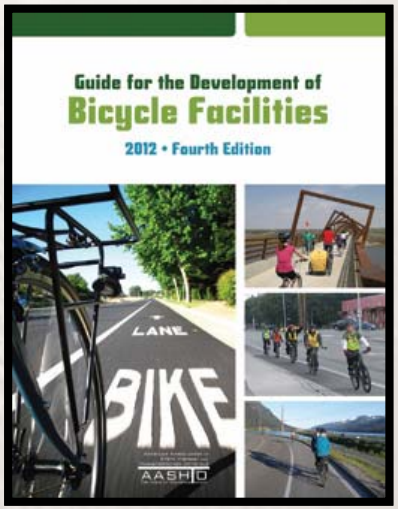
ALCOTT TO CROSSTOWN





GUIDING DOCUMENTS

- City's Non-Motorized Plan, 1999
- Transportation Alternative Program Grant
- Guide for the Development of Bicycle Facilities
- MDOT's Road Design Manual



WHAT IS A COMPLETE STREET?

- A system of streets…planned, designed, operated and maintained so all legal users may safely, comfortably and conveniently move along and across streets
  ~PA 134 of 2010

COMPLETE STREETS

ALL USERS INCLUDE:

- Walking
- Driving
- Biking
- Trucks
- Children
- Elderly
- People of all abilities
- Transit

WHY ALL USERS?

- **1/4th** the younger generation do not have a driver's license
- 2008-2014 vehicle miles traveled declined by **201,000 miles***
- Safer opportunities for transportation:

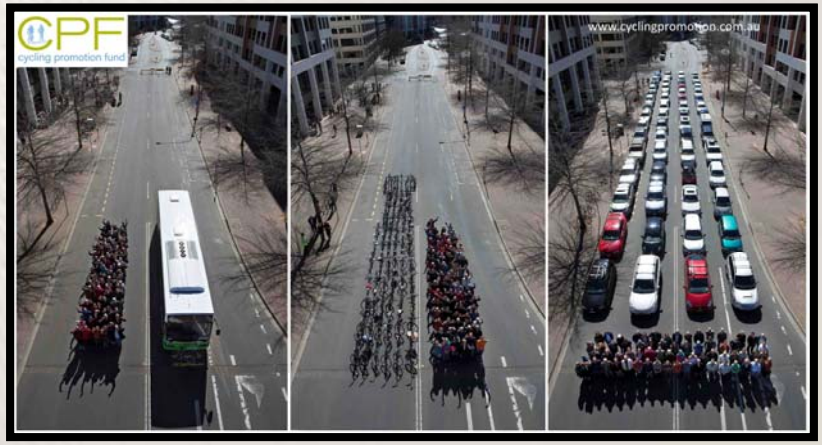
  Biking, Transit, and Walking

- **39%** of households reported that at least 1 person uses a bike for transportation**
- **28%** bicyclists commute by bike at least 2 times a week**

Sources:
*Michigan Traffic Crash Facts for Kalamazoo County
**MDOT Statewide report on bicycling

NON-MOTORIZED TRAVEL

- A means of interacting with nature, neighbors, and businesses within a community.
- Reduction in air pollution.
- Encourages physical fitness.
- Increases real estate values.
- Increases tax revenue.
- Retains and attracts residents.
- Retains and attracts businesses.



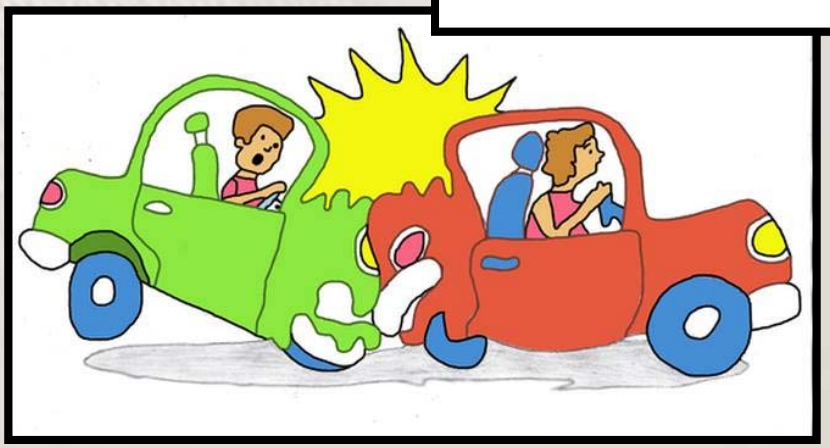
Source: SW Michigan Non-Motorized Transportation Plan, 2011

BIKE LANES

- Provide space for people biking.
- Bikes are safer on the street than the sidewalk.
- Protect the road edge from wear and tear due to vehicles.

LEFT TURN LANES

- Removes cars turning left into driveways, businesses, and side streets from travel lane.
- Reduces crashes along a segment
  - Rear-End Left Turns by 80%
  - Head-On Left Turns by 50%
  - Sideswipes by 30%



Source: Michigan Department of Transportation Crash Reduction Factors

GET INVOLVED!

- Check out Imagine Kalamazoo!
  - http://www.imaginekalamazoo.com/
- Check out the City of Kalamazoo's website for updates and information!
  - http://www.kalamazoocity.org/
- Attend local neighborhood meetings!
  - Board meetings on **4th** Thursday of the month (5:30pm)
  - http://www.kalamazoocity.org/edison
- Attend City Commission meetings!
  - **1st** and **3rd** Mondays of the month.
  - http://www.kalamazoocity.org/departments/city-commission

HRC
HUBBELL, ROTH & CLARK, INC
CONSULTING ENGINEERS SINCE 1915

THE CITY OF Kalamazoo

Questions?

CMAQ & TAP

DA

Control Section	CMG 39405; TAU 39405
Job Number	119218A; 119221A; 126646A
Project	CMG 1739(010)(011); TAP 1739(008)
Federal Item No.	JJ 5607; JJ 5608; HK 1304
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	17-5023

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF KALAMAZOO, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Kalamazoo, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated January 10, 2017, attached hereto and made a part hereof:

PART A – CMG 39405; JOB #119218A; CMG 1739(010); JJ 5607; FEDERAL PARTICIPATION
Signal interconnection, intersection vehicle detection, and signal modernization work along Burdick Street from Alcott Street to South Street; and all together with necessary related work.

PART B – CMG 39405; JOB #119218A; CMG 1739(010); JJ 5607; NO FEDERAL PARTICIPATION
Coating of galvanized traffic signal support structure work within the limits as described in PART A; and all together with necessary related work.

PART C – CMG 39405; JOB #119221A; CMG 1739(011); JJ 5608; FEDERAL PARTICIPATION
Signal modernization and intersection vehicle detection work along Drake Road from Croyden Road to Grand Prairie Avenue; and all together with necessary related work.

PART D – CMG 39405; JOB #119221A; CMG 1739(011); JJ 5608; NO FEDERAL PARTICIPATION
Coating of galvanized traffic signal support structure work within the limits as described in PART C; and all together with necessary related work.

PART E – TAU 39405; JOB #126646A; TAP 1739(008); HK 1304; FEDERAL PARTICIPATION

Permanent signing and pavement marking work along Burdick Street from Lovell Street to Cork Street; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

CONGESTION MITIGATION AND AIR QUALITY
TRANSPORTATION ALTERNATIVES PROGRAM

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT, including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in accordance with the following:

PART A

Federal Congestion Mitigation and Air Quality Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) $433,887, or (2) an amount such that 100 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART C

Federal Congestion Mitigation and Air Quality Funds shall be applied to the eligible items of the PART C portion of the PROJECT COST up to the lesser of: (1) $496,300, or (2) an amount such that 100 percent, the normal Federal participation ratio for such funds, for the PART C portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART C portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART E

Federal Transportation Alternatives Program Funds shall be applied to the eligible items of the PART E portion of the PROJECT COST up to the lesser of: (1) $60,000, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART E portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART E portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B and PART D

The PART B and PART D portions of the PROJECT COST are not eligible for Federal participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon an effective billing rate and the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses. The initial effective billing rate for the federal funding of the PART A, PART C, and PART E portions of the PROJECT is calculated by using the federal funding for the PART A, PART C, and PART E portions of the PROJECT set at the time of the award of the construction contract, as described in Section 5, and dividing by the total costs of the PART A, PART C, and PART E portions of the PROJECT eligible for federal funding and authorized at the time of the award of the construction contract.

The effective billing rate for the federal funding of the PART A, PART C, and PART E portions of the PROJECT is determined by the current funding authorization for the PART A, PART C, and PART E portions of the PROJECT and may change as the PROJECT progresses and funding authorizations are increased or decreased.

7. At such time as traffic volumes and safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances as may be necessary to prohibit parking in the traveled roadway throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities.

If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsive for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

The DEPARTMENT shall not be subject to any obligations or liabilities by contractors of the REQUESTING PARTY or their subcontractors or any other person not a party to this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the REQUESTING PARTY shall take no action or conduct which arises either directly or indirectly out of its obligations, responsibilities, and duties under this contract, which results in claims being asserted against or judgments being imposed against the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission.

In the event that the same occurs, for the purpose of this contract it will be considered as a breach of this contract thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan State Transportation Commission a right to seek and obtain any necessary relief or remedy, including but not by way of limitation, a judgment for money damages.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF KALAMAZOO

By_____
Title:

By_____
Title:

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By_____
Department Director MDOT

FORM APPROVED
1/13/17
ASSISTANT
ATTORNEY
GENERAL

RDB
1/12/17

APPROVED BY:

Administrator
Real Estate

1/12/17
Date

January 10, 2017

EXHIBIT I

CONTROL SECTION	CMG 39405; TAU 39405
JOB NUMBER	119218A; 119221A; 126646A
PROJECT	CMG 1739(010)(011);TAP 1739(008)

ESTIMATED COST

CONTRACTED WORK

	PART A	PART B	PART C	PART D	PART E	TOTAL
Estimated Cost	$733,100	$3,000	$656,400	$16,000	$87,100	$1,495,600

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$733,100	$3,000	$656,400	$16,000	$87,100	$1,495,600
Less Federal Congestion Mitigation and Air Quality Funds*	$433,887	$ -0-	$496,300	$ -0-	$ -0-	$ 930,187
Less Federal Transportation Alternatives Program Funds	$ -0-	$ -0-	$ -0-	$ -0-	$60,000	$ 60,000
BALANCE (REQUESTING PARTY'S SHARE)	$299,213	$3,000	$160,100	$16,000	$27,100	$ 505,413

*Federal Funds for the PART A, PART C, and PART E portions of the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.

1. Engineering

   a. FAPG (6012.1): Preliminary Engineering

   b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts

   c. FAPG (23 CFR 635A): Contract Procedures

   d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

2. Construction

   a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims

   b. FAPG (23 CFR 140B): Construction Engineering Costs

   c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies

   d. FAPG (23 CFR 635A): Contract Procedures

   e. FAPG (23 CFR 635B): Force Account Construction

   f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.

C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.

D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than $100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.

H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.

O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.

Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

   The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

   The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

   If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

   In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

   Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

a. Agencies expending a total of $500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than $500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than $1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.

2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

   Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

   a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

   b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

      With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

   c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

   d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.

C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.

D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

<u>Revised June 2011</u>

APPENDIX B
TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

   a. Withholding payments to the contractor until the contractor complies; and/or

   b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make
(Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE, Public Services Director

PREPARED BY: Jim Hoekstra, PE, Traffic Engineer

DATE: 3/21/2017

SUBJECT: Approve Contract No 17-5083 with the Michigan Department of Transportation for the Portage Road Improvement Project

RECOMMENDATION

It is recommended that the City Commission approve the contract with the Michigan Department of Transportation (MDOT) in the amount of $587,001 for the Portage Road Improvement Project and authorize the City Manager to sign all documents on the City's behalf.

BACKGROUND

Public Act 51 of 1951 created a fund into which specific transportation taxes are deposited, and prescribed how these revenues are to be distributed and the purpose for which they can be spent. Act 51 also established jurisdictional road networks and set priorities for the use of transportation revenues. As an incorporated city, the City of Kalamazoo is eligible to receive federal and state funding for road construction and maintenance through Public Act 51.

Public Services identified an improvement project for Portage Road from Sheridan Street to Stockbridge Avenue. This project would include milling and resurfacing, concrete sidewalk and ramp repair, signing and pavement marking. As part of this project, all lead services within the project boundaries will also be replaced.

Public Services applied for and received $725,999 in Federal Surface Transportation (STU) funding through our local Metropolitan Planning Organization, Kalamazoo Area Transportation Study (KATS). Public Services designed the project with a consultant and submitted the project for bidding through the MDOT Local Agency Programs (LAP). Through the LAP, MDOT will handle the bidding, awarding, and contractor payments. The City of Kalamazoo will be responsible for the on-site inspection and verifying the contractor quantities. MDOT will bill the City for the local share of the as-bid amount and any administrative fees.

COMMUNITY RESOURCES CONSULTED

As with all federally funded projects, this was included in the Kalamazoo Area Transportation Study (KATS) Transportation Improvement Program, which is advertised and open to public comment. There is no change in street lane designations, width or parking. Notifications concerning lead services are ongoing and residents will

be informed concerning project impacts and coordination at the scheduled neighborhood meeting on April 5, 2017.

FISCAL IMPACT

Funds are available in the 2017 Major Streets and Water Fund CIP budgets for this project.

Funding	
FY 2016 Major Street Budget	$ 46,350
FY 2017 Major Street Budget	527,576
FY 2017 Water CIP	157,100
Federal Highway Administration Trust Fund	725,999
Total Funding	$1,457,025
Cost	
Engineering and Contingency	$ 144,025
Construction (City)	587,001
Construction (FHWA)	725,999
Total Cost	$1,457,025

ALTERNATIVES

The alternative of not approving the contract with MDOT is not recommended as Portage Road requires resurfacing and a major portion of the cost is to be funded through federal and state funds.

ATTACHMENTS:

Type	Description
Contract	MDOT Contract

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

March 9, 2017

Mr. Scott A. Borling, City Clerk
City of Kalamazoo
241 West South Street, Room 104
Kalamazoo, Michigan 49007

RECEIVED
MAR 13 2017
Kalamazoo City Clerk

Dear Mr. Borling:

RE: Contract Number: 17-5083
Control Section: NH 39000
Job Number: 121417A

Enclosed are the original and one copy of the above described contract between your organization and the Michigan Department of Transportation (MDOT). Please take time to read and understand this contract.

1. Do not date the contracts. MDOT will date the contracts when they are executed.

2. If this contract meets with your approval, secure the authorized signatures on the enclosed contracts.

3. Attach two (2) original certified resolutions. The resolution should specifically name the officials who are authorized to sign the contract and include the contract number. If you need an example of a resolution, please contact Kathy Fulton at fultonk@michigan.gov or (517) 373-4161.

4. Return the signed original and copy of the above-described contract and attach two (2) original certified resolutions to:

   Attention: Kathy J. Fulton
   MDOT – Development Services Division, 2nd Floor
   425 West Ottawa Street, P.O. Box 30050
   Lansing, MI 48909

In order to ensure that the work and payment for this project is not delayed, return the contracts within 35 days from the date of this letter. A copy of the executed contract will be returned to your organization.

If you have questions on the content of this contract, or revisions are required, please contact Monica Uribe, Local Government Contract Engineer at uribem1@michigan.gov or (517) 335-2266.

Enclosure

NH & STP

DA

Control Section	NH 39000
Job Number	121417A
Project	NH 1739(016)
Federal Item No.	HK 1422
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	17-5083

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of _____, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF KALAMAZOO, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in the City of Kalamazoo, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated February 15, 2017, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION
Hot mix asphalt cold milling and resurfacing work along Portage Street from Sheridan Drive northerly to Stockbridge Avenue; including concrete sidewalk ramp, restoration, permanent signing, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION
Water service upgrade work within the limits as described in PART A; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

SURFACE TRANSPORTATION PROGRAM
NATIONAL HIGHWAY SYSTEM

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except for construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in accordance with the following:

PART A

Federal Surface Transportation Funds in combination with Federal National Highway System Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) $725,999 or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

The PART B portion of the PROJECT COST is not eligible for Federal participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon an effective billing rate and the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses. The initial effective billing rate for the federal funding for the PART A portion of the PROJECT is calculated by using the federal funding for the PART A portion of the PROJECT set at the time of the award of the construction contract, as described in Section 5, and dividing by the total costs of the PART A portion of the PROJECT eligible for federal funding and authorized at the time of the award of the construction contract.

The effective billing rate for the federal funding of the PART A portion of the PROJECT is determined by the current funding authorization for the PART A portion of the PROJECT and may change as the PROJECT progresses and funding authorizations are increased or decreased.

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will promptly cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that

remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsive for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF KALAMAZOO

By_____
Title:

By_____
Title:

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By_____
Department Director MDOT

FORM APPROVED
3-8-2017
RLB
ASSISTANT
ATTORNEY
GENERAL

RPB
2/28/17

APPROVED BY:

Administrator
Real Estate

3/9/17
Date

February 15, 2017

EXHIBIT I

CONTROL SECTION	NH 39000
JOB NUMBER	121417A
PROJECT	NH 1739(016)

ESTIMATED COST

CONTRACTED WORK

	PART A	PART B	TOTAL
Estimated Cost	$1,155,900	$157,100	$1,313,000

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$1,155,900	$157,100	$1,313,000
Less Federal Funds*	$ 725,999	$ -0-	$ 725,999
BALANCE (REQUESTING PARTY'S SHARE)	$ 429,901	$157,100	$ 587,001

*Federal Funds for the PART A portion of the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.

1. Engineering

   a. FAPG (6012.1): Preliminary Engineering

   b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts

   c. FAPG (23 CFR 635A): Contract Procedures

   d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

2. Construction

   a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims

   b. FAPG (23 CFR 140B): Construction Engineering Costs

   c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies

   d. FAPG (23 CFR 635A): Contract Procedures

   e. FAPG (23 CFR 635B): Force Account Construction

   f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.

C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.

D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than $100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.

H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.

O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.

Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

   The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

   The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

   If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

   In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

   Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

a. Agencies expending a total of $500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than $500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than $1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.

2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

   Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

   a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

   b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

      With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

   c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

   d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.

C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.

D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

<u>Revised June 2011</u>

APPENDIX B
TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

   a. Withholding payments to the contractor until the contractor complies; and/or

   b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make
(Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

PREPARED BY: Thomas C. Skrobola, Director of Management Services/Chief Financial Officer

DATE: 3/28/2017

SUBJECT: Approval of Agreement between the City of Kalamazoo Building Authority and Traffic & Safety Control Systems, Inc. for Parking Access and Revenue Control Upgrade Project in the amount of $741,283.77.

RECOMMENDATION

It is recommended that the City Commission approve an agreement between the City of Kalamazoo Building Authority and Traffic & Safety Control Systems, Inc. for Parking Access and Revenue Control Upgrade Project in the amount of $741,283.77.

BACKGROUND

In the Fall of 2016, The Downtown Parking Committee solicited proposals for the implementation of major equipment upgrades for the downtown parking system. The Committee selected the proposal from Traffic & Safety Control Systems as the lowest responsive bidder.

Attached is the proposed Agreement, which is in the Standard Form of Agreement by the American Institute of Architects (AIA). Please note that the City's Building Authority is indicated as a party to the agreement. This is required as the Building Authority has provided financing for Parking System assets that will be upgraded in this project.

The specifications for this project were developed by Walker Parking Consultants, who have provided general parking system consultation for the Parking Committee for many years.

This project is designed to provide Parking Access and Revenue Control System (PARCS) upgrades for automated revenue collection in DKI operated parking ramps and parking lots, including the following:

- Epic Ramp
- Central City Parking Office
- Kalamazoo Mall Ramp
- Lot 9 (Water Street)

The substantial completion date is June 1, 2017.

POLICY CONSIDERATIONS

None.

COMMUNITY RESOURCES CONSULTED

None.

FISCAL IMPACT

This project is to be financed by a portion of the City's 2017 Capital Improvement Bond Proceeds. The debt service related to these bonds will be paid strictly from revenues of the Parking System.

ALTERNATIVES

The City Commission could choose to reject the proposed Agreement. This is not recommended as the PARCS requires upgrades, and this project has been carefully planned by the Parking Committee, the DKI, and the City for years.

ATTACHMENTS:

Type	Description
Agreement	Agreement.CoK.BuildingAuthority.TrafficControlSystems.PARC.2017

AIA® Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 9th day ofMarch in the year 2017
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Kalamazoo Building Authority
241 West South Street
Kalamazoo, MI 49007
269.337.8047

and the Contractor:
(Name, legal status, address and other information)

Traffic & Safety Control Systems, Inc.
48584 Downing
Wixom, MI 48393
248.348.0570

for the following Project:
(Name, location and detailed description)

Parking Access and Revenue Control Upgrades
Kalamazoo, MI
For the City of Kalamazoo and the Kalamazoo Downtown Development Authority Parking System

The Architect:
(Name, legal status, address and other information)

Walker Parking Consultants
2121 Hudson Ave., Suite 201
Kalamazoo, MI 49008
269.381.6080

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Paragraphs Deleted)

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

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User Notes: (3B9ADA21)

Portion of Work	Substantial Completion Date
Phase 1: Ramp 2 (Epic Ramp) Central City Parking Office Ramp 2 (Kalamazoo Mall Ramp) Lot 9 (Water Street) *Substantial completion shall mean system ready for 30-day acceptance testing.	Phase 1: June 1, 2017

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be
seven hundred
forty-one
thousand two hundred eighty-three dollars and seventy-seven cents
($ 741,283.77), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Refer to Exhibit A:
Yearly Maintenance and Service Contract. $34,355/year (price is fixed for years 2 - 5 once first year warranty expires). Contract will not go into effect or be paid until first year warranty expires. Price not included in contract sum.

Recommended Spares. Alternates total $23,626.32. Red text deviates from that bid tab.

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
Refer to Exhibit A, Part 2 Base Bid Items. Red text deviates from bid tab.		

(Paragraphs Deleted)

(Table Deleted)

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ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the
month.

(Paragraph Deleted)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

(Paragraph Deleted)

.3 Subtract the aggregate of previous payments made by the Owner; and

(Paragraph Deleted)

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon completion of 30-day acceptance test, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

(Paragraphs Deleted)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered,installed, and operational at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

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§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 DISPUTE RESOLUTION

(Paragraphs Deleted)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

(Paragraphs Deleted)

§ 8.3 The Owner's representative:
(Name, address and other information)

Andrew Haan, Executive Director
Kalamazoo Downtown Development Authority
141 E. Michigan Ave., Suite 501
Kalamazoo, MI 49007
269.344.0795
ahaan@downtownkalamazoo.org

§ 8.4 The Contractor's representative:
(Name, address and other information)

Jeffery E. Timer
Traffic & Safety Control Systems, Inc.
48584 Downing
Wixom, MI 48393
248.348.0570

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User Notes: (3B9ADA21)

jefft@trafficandsafety.com

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

(Paragraph Deleted)

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are

City of Kalamazoo Contracting Requirements, Section V, Specifications and General Conditions.

(Table Deleted)

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
Exhibit B	Parking Access and Revenue Control Systems (PARCS) Upgrade	November, 2016	

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
Exhibit C	Kalamazoo Downtown Development Authority PARCS Replacement	11/04/2016

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
1	November 30, 2016	1-2
2	December 9, 2016	1-10

(Paragraph Deleted)

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:
Exhibit E - Traffic & Safety Control Systems, Inc. - Amano Bid Response

(Paragraphs Deleted)

(Table Deleted)

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User Notes:

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
Jim RitsemaCity Manager	Keith HayPresident
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A101™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:51:14 on 03/08/2017.

PAGE 1

AGREEMENT made as of the 9th day ofMarch in the year 2017

...

City of Kalamazoo Building Authority
241 West South Street
Kalamazoo, MI 49007
269.337.8047

...

Traffic & Safety Control Systems, Inc.
48584 Downing
Wixom, MI 48393
248.348.0570

...

Parking Access and Revenue Control Upgrades
Kalamazoo, MI
For the City of Kalamazoo and the Kalamazoo Downtown Development Authority Parking System

...

Walker Parking Consultants
2121 Hudson Ave., Suite 201
Kalamazoo, MI 49008
269.381.6080

PAGE 2

~~*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*~~

...

~~If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:~~

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...

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work ~~not later than ( ) days from the date of commencement, or~~ as follows:

PAGE 3

Phase 1: Ramp 2 (Epic Ramp) Central City Parking Office Ramp 2 (Kalamazoo Mall Ramp) Lot 9 (Water Street) *Substantial completion shall mean system ready for 30-day acceptance testing.	Phase 1: June 1, 2017

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be

...

seven hundred

...

forty-one

...

thousand two hundred eighty-three dollars and seventy-seven cents

...

($ 741,283.77), subject to additions and deductions as provided in the Contract Documents.

...

Refer to Exhibit A:
Yearly Maintenance and Service Contract. $34,355/year (price is fixed for years 2 - 5 once first year warranty expires). Contract will not go into effect or be paid until first year warranty expires. Price not included in contract sum.

Recommended Spares. Alternates total $23,626.32. Red text deviates from that bid tab.

...

Refer to Exhibit A, Part 2 Base Bid Items.
Red text deviates from bid tab.

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(3B9ADA21)

...

~~§ 4.4 Allowances included in the Contract Sum, if any:~~

...

~~*(Identify allowance and state exclusions, if any, from the allowance price.)*~~

...

~~Item~~ ~~Price~~

PAGE 4

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the ~~month, or as follows:~~

...

~~**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the~~ month.~~If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~

...

~~*(Federal, state or local laws may require payment within a certain period of time.)*~~

...

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

...

~~**.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);~~

...

~~**.4** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.~~

...

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.1 Add, upon ~~Substantial Completion of the Work,~~ completion of 30-day acceptance test, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

...

~~§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:~~

...

~~*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*~~

...

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been ~~deliveredand stored~~ delivered,installed, and operational at the site.

PAGE 5

~~**§ 6.1 INITIAL DECISION MAKER**~~

...

~~The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.~~

...

~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

...

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

...

~~**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

...

~~*(Insert rate of interest agreed upon, if any.)*~~

...

Andrew Haan, Executive Director
Kalamazoo Downtown Development Authority
141 E. Michigan Ave., Suite 501
Kalamazoo, MI 49007

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269.344.0795
ahaan@downtownkalamazoo.org

...

Jeffery E. Timer
Traffic & Safety Control Systems, Inc.
48584 Downing
Wixom, MI 48393
248.348.0570
jefft@trafficandsafety.com

PAGE 6

~~§ 8.6 Other provisions:~~

...

§ 9.1.2 The General Conditions are~~AIA Document A201–2007, General Conditions of the Contract for Construction.~~

...

~~§ 9.1.3 The Supplementary and other Conditions of the Contract:~~City of Kalamazoo Contracting Requirements, Section V, Specifications and General Conditions.

...

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

...

Exhibit B	Parking Access and Revenue Control Systems (PARCS) Upgrade	November, 2016	

...

Exhibit C		Kalamazoo Downtown Development Authority PARCS Replacement	11/04/2016

...

1	November 30, 2016	1-2
2	December 9, 2016	1-10

...

~~Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.~~

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...

Exhibit E - Traffic & Safety Control Systems, Inc. - Amano Bid Response

...

~~.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:~~

...

~~.2 Other documents, if any, listed below:~~

...

~~*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*~~

...

~~**ARTICLE 10 INSURANCE AND BONDS**~~

...

~~The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.~~

...

~~*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*~~

...

~~Type of insurance or bond~~	~~Limit of liability or bond amount ($0.00)~~

Jim RitsemaCity Manager Keith HayPresident

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Andrew J. Vidor, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:51:14 on 03/08/2017 under Order No. 5846683571 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

PREPARED BY: Sean Fletcher, CPRP, Parks & Recreation Director

DATE: 3/16/2017

SUBJECT: Change order to increase the contract with the Sweeney Group to continue fundraising efforts for the Bronson Park Capital Campaign.

RECOMMENDATION

It is recommended that the City Commission approve a change order of $40,000.00 to pay the Sweeney Group a total of $130,414.00 for continued fundraising for the Bronson Park Capital Campaign.

BACKGROUND

Fundraising to implement the Bronson Park Master Plan improvements began in the fall of 2015. A total of $1.1 million has been raised to date, with another $1.7 million to be raised to attain the goal of $2.8 million to complete all improvements. The Sweeney Group has been paid $90,414.00 to date, with an additional $40,000.00 required to pay the consultant through August 2017.

POLICY CONSIDERATIONS

The City's Purchasing Policy requires that “If one or more change orders causes a contract not approved by the City Commission to exceed $125,000 that change order must be taken to the City Commission for approval.”

COMMUNITY RESOURCES CONSULTED

None required.

FISCAL IMPACT

Funds raised to date include an amount dedicated to campaign planning and will be utilized to pay the Sweeney Group, so there will be no fiscal impact to the General Fund.

ALTERNATIVES

If the change order is not approved the City will need to end its contract with this fund raising consultant. This option is not recommended.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Laura J. Echtinaw, Legal Secretary

DATE: 3/24/2017

SUBJECT: Quadricycle Ordinance Amendments

INFORMATIONAL ITEMS

none

RECOMMENDATION

It is recommended that the City Commission adopt two ordinances amending various City Ordinance Code sections so as to eliminate the seatbelt requirement for quadricycles and to permit the possession and consumption of alcoholic beverages by passengers on quadricycles.

BACKGROUND

In 2015, the Legislature enacted two measures (PA 126 and PA127) amending the Michigan Vehicle Code, Public Act 300 of 1949 to permit the operation of "commercial quadricycles" on public streets and to permit local regulation of this form of vehicular transportation.

As defined, a "quadricycle" is a 4-wheeled vehicle that seats at least 6 people who provide power to move the vehicle by pedaling in a manner similar to that of a bicycle. In 2016, Kalamazoo joined several other Michigan cities, Ann Arbor, Grand Rapids, Holland, and Traverse City to name but a few, to permit and regulate this form of transportation. Although several quadricycle operators expressed interest in providing this service in Kalamazoo, only one secured a license in 2016. It has been requested that both the seatbelt requirement for passengers and the prohibition on alcohol be rescinded. Ostensibly these changes may encourage other quadricycle operators to enter the Kalamazoo market. The proposed changes are consistent with other Michigan cities which permit the operation of commercial quadricycles.

The first of the two proposed ordinances modifies several sections of Article VI of Chapter 37, to correct errors in the codified text and specifically delete the seatbelt requirement for commercial quadricycles. The second proposed ordinance addresses several provisons in the City Code which touch on the open possession and consumption of alcohol. While State law permits the possession and use of alcoholic liquor by quadricycle passengers, it also permits its prohibition by local ordinance. The proposed ordinance amendment while permitting the possession of open alcoholic beverages by quadricycle passengers would not permit a passenger to step off of a quadricycle while in the possession of an open container of an alcoholic beverage.

COMMUNITY RESOURCES CONSULTED

Input has been received from Downtown Kalamazoo, Inc., Downtown Kalamazoo Retail Restaurant Association, Community Development and Planning Department in support of the changes and the Department of Public Safety which holds a neutral view of the changes.

FISCAL IMPACT

None

ALTERNATIVES

The City Commission could choose to reject the changes or defer action on the proposed changes. However, as the weather warms, operators will want to know the City regulations that will be applicable before embarking on providing this form of transportation service.

ATTACHMENTS:

Type	Description
Ordinances	Proposed Amendments re: Commercial Quadricycles
Correspondence	Letter of Support

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. _____

AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 37 "VEHICLES FOR HIRE", ARTICLE VI "COMMERCIAL QUADRICYCLES", TO REPEAL THE SEATBELT EQUIPMENT REQUIREMENT, ADDRESS THE TRANSFER OF OPERATING PERMITS, AND CORRECT ERRORS IN THE CODIFIED TEXT

THE CITY OF KALAMAZOO ORDAINS:

Section 1. § 37-120 A. (6) requiring that a commercial quadricycle be equipped with seatbelts is repealed.

Section 2. § 37-122 is amended to address the transfer of operating permits by the addition of Paragraph D. to read as follows:

"**§ 37-122 Validity of operating permit**

D. No operating permit shall be transferred directly or indirectly to another owner without the consent of the City Clerk. Requests for the transfer of an operating permit shall be considered and processed as a new application."

Section 3. § 37-124 A. is amended to read as follows so as to correct an omission in the text:

"**§ 37-124 Operating regulations**

A. No person under the age of 18 shall operate or drive a commercial quadricycle."

Section 4. § 37-124 K is amended to read as follows so as to remove the requirement of seat belt use:

§. 37-124 Operating Regulations

K. No person shall drive a quadricycle when the number of passengers exceeds the number of available seats. No person shall operate a quadricycle unless all passengers are seated in a seat designated for that purpose. Infant or child car seats are not permitted to be used on a quadricycle.

Section 5. Repealer.

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Section 6. **Severability.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 7. **Effective Date.**

Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2017. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

_____
Bobby J. Hopewell, Mayor

_____
Scott Borling, City Clerk

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 37, "VEHICLES FOR HIRE", ARTICLE VI, "COMMERCIAL QUADRICYCLES", §37-124; CHAPTER 36, "TRAFFIC CODE", ARTICLE III, "OPERATION OF VEHICLES GENERALLY", §36-130; AND CHAPTER 22 "OFFENSES AND CRIMES GENERALLY", §22-57 TO PERMIT THE POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES BY QUADRICYCLE PASSENGERS

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Chapter 37, "Vehicles for Hire", Article VI, "Commercial Quadricycles", § 37-124 M. of the Kalamazoo City Code setting forth commercial quadricycle operating regulations is amended so as to permit the possession and consumption of alcoholic beverage by quadricycle passengers, to read as follows:

"§ 37-124 Operating Regulations

M. A passenger whose age is 21 years or older may consume, or possess in a container which is open, uncapped or upon which the seal was broken, any alcoholic beverage within or on a quadricycle; provided, however, that this ordinance section shall not be a defense to a violation of §22-57, which generally prohibits the consumption from or possession of open containers of alcoholic beverages in public places, when a passenger disembarks, even temporarily, from a quadricycle while possessing an open or uncapped container of an alcoholic beverage; provided further, this ordinance section does not permit the possession or consumption of any alcoholic beverage by the driver while operating a quadricycle."

Section 2. Chapter 36, "Traffic Code", Article III, "Operation of Vehicles Generally", §36-130 of the Kalamazoo City Code prohibiting open containers of alcoholic liquor in vehicles is amended by the addition of Paragraph C. to provide an exception for quadricycles, to read as follows:

"§ 36-130 Open liquor containers in vehicles on highways and streets

C. This section shall not apply to a commercial quadricycle holding a current and valid operating permit issued by the City Clerk."

Section 3. Chapter 22, "Offenses and Crimes Generally", § 22-57 of the Kalamazoo City Code prohibiting the possession or consumption of alcoholic beverages in public places is amended to designate the current text as Paragraph A. and the addition of Paragraph B. to provide an exception for quadricycle passengers, to read as follows:

"§ 22-57 Consumption of alcoholic beverages in public places

A. No person shall consume or possess any uncapped, open container of any alcoholic liquor, as that term is defined in the Michigan Liquor Control Commission Act, on the public streets, parkways, or sidewalks of the City, or in any other place open to the general public, including any store or establishment doing business with the public not licensed to serve alcoholic beverages; provided however, that alcoholic liquor may be sold, possessed and/or consumed during the period of a special license with the specific approval and in conformance with the conditions of such approval and the condition of a special license granted by the Michigan Liquor Control Commission.

B. It is not a violation of this section for an individual, whose age is 21 years or older, while a passenger on a quadricycle licensed under Chapter 37 of this Code, to consume or possess alcoholic liquor."

Section 4. Repealer.

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Section 5. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date.

Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2017. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

_____
Bobby J. Hopewell, Mayor

_____
Scott Borling, City Clerk

To: Rebekah Kik
Director Community Planning & Development
City of Kalamazoo
415 Stockbridge Avenue
Kalamazoo, MI 49001

Date: March 23, 2017

Dear Ms. Kik,

This letter is to request an amendment to Kalamazoo's Commercial Quadricycle ordinance:

Article VI, *37-124 Vehicles For Hire, Article VI Commercial Quadricycles M. No person shall consume, or possess in a container which is open, uncapped or upon which the seal was broken, any alcoholic beverage within or on a quadricycle.*

According to our research, the current commercial quadricycle ordinance was originally created to reflect the guidelines of other popular Michigan cities such as Grand Rapids, Ann Arbor and Detroit. In addition, at the time the ordinance was developed, a commercial quadricycle company with a business model not allowing open, uncapped alcohol to be consumed within or on a quadricycle, was the only voice representing the commercial quadricycle industry.

Since the introduction of commercial quadricycles throughout Michigan, other popular Michigan cities have amended their commercial quadricycle ordinance by omitting the language that restricts commercial quadricycle riders *"to consume and possess, open or uncapped, any alcoholic beverages within or on a commercial quadricycle."* Commercial quadricycle business owners have discovered that allowing the consumption of alcoholic beverages, while on a quadricycle tour, has been a more successful business model; resulting in greater volumes of business driven directly to local bars and restaurants. In addition, commercial quadricycles help to add to the vibrancy of the city by offering a unique experience while touring the city. To review Detroit's, Grand Rapids and Ann Arbor's commercial quadricycle ordinances please visit the following sites: Detroit, http://bit.ly/2jVkCYQ; Grand Rapids, http://bit.ly/2kCw1AY and Ann Arbor http://bit.ly/2kCw1AY

We are writing in joint support, to respectfully request that the City of Kalamazoo Commissioners consider amending Kalamazoo's current **Commercial Quadricycle ordinance, Article VI, section 37-124, letter M.** We believe that amending the Commercial Quadricycle ordinance will help Kalamazoo remain competitive and leverage the growth and economic impact of Kalamazoo's Brewery and Distillery districts. We support amending the current ordinance to reflect the changes made by other cities such as Ann Arbor, Grand Rapids and Detroit. We are proposing that the City of Kalamazoo remove the language restricting "the consumption of alcoholic beverages within or on a quadricycle" from Kalamazoo's commercial quadricycle ordinance referenced above. This change will align with the State of Michigan's decision to allow Commercial Quadricycles business models to allow participants to consume alcoholic beverages, in open containers, within or on a commercial quadricycle.

The following are additional reasons why the evolution of the Commercial Quadricycle Ordinance will benefit the city of Kalamazoo:

- Will enhance and encourage the continued growth of Kalamazoo's non-motorized community.
- Will provide continued support and growth of a variety of businesses that have already experienced benefits from a quadricycle operating in downtown Kalamazoo.
- Will add to the vibrancy and continued growth of downtown Kalamazoo by offering collaborative partnerships and encouraged growth of downtown events.

Respectfully Yours,

Downtown Kalamazoo Retail Restaurant Association
Clarence Lloyd

Downtown Kalamazoo, Incorporated
Andrew Haan

Green Door Distilling Company
Josh Cook

Greenleaf Hospitality Group
Tim Rayman

Food Dance
Michelle Miller

Principle Food & Drink
Casey Longton

Arcadia Ales Brewing Company
Tim Suprise

Hopcat
Christopher Funaro

fuze kitchen & bar
AJ Danias

Millennium Restaurant Group
Bob Lewis

Harvey's/Olde Peninsula
Steve Blinn

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

REVIEWED BY: Richard O. Cherry, Assistant City Attorney

PREPARED BY: Laura Echtinaw, Legal Secretary

DATE: 3/17/2017

SUBJECT: Resolution Establishing a $250 Recovery Fee for Vehicles Seized Under the Michigan Public Health Code Forfeiture Law

RECOMMENDATION

It is recommended that the City Commission approve the attached resolution, which establishes that owners pay a $250 fee for vehicles seized pursuant to M.C.L.. § 333. 7521, if the owner requests the release of the seized vehicle. The $250.00 fee covers the tow and administrative cost incurred by the City of Kalamazoo for enforcing the forfeiture law.

BACKGROUND

Motor vehicles are seized by the Kalamazoo Department of Public Safety (KDPS) as they are often used as a conveyance or container for the trafficking of narcotics. Per KDPS practice, the seizure of vehicles is limited to locating narcotics, specifically heroin, cocaine, methamphetamine or delivery amounts of marijuana. The vehicle must also be valued at over $3000. KDPS does not seize leased or rental vehicles.

KDPS currently has a contract with McDonald's Towing for such seizures. McDonald’s Towing charges are $60 per vehicle. The process requires the officer's time investigating the narcotics offense, completing the PD-125 (vehicle disposition report), notifying dispatch which must make a log entry and input the information into the Law Enforcement Information Network (LEIN), and waiting for the tow truck to arrive to remove the vehicle.

KDPS continues to seek to seize these vehicles as asset forfeiture was not designed as a revenue source but rather to punish or deter the illegal trafficking of narcotics. If KDPS can no longer seize vehicles, there is no immediate consequence to the illegal activity.

KDPS proposes the adoption of a $250 fee for the return of vehicles seized in this manner. The $250 represents the $60 cost to the City, paid to McDonald's Towing, plus an approximation of the officer and dispatcher time related to the seizure. This fee also recoups administrative costs for the processing of claims by the Kalamazoo Valley Enforcement Team (KVET) administrative assistant and the KVET prosecuting attorney. Prior to this request, the Michigan Public Health Code, required individuals to post at least a $250.00 bond for vehicles that were subject to forfeiture under the law, however pursuant to Public Act 418 of 2016, this $250.00 bond will be eliminated by April 4, 2017, thus the need for this fee.

Upon payment of the $250, the vehicle is released to the registered owner with no additional towing and storage fees. This is a win for both the police agency and the citizen as private towing and storage fees can be quite hefty. The fee also eliminates a delay in going through the court process to contest the seizure. This fee based settlement saves the City the $150 filing fee to initiate a proceeding in court, plus motion fees, and the officer's time doing further investigation.

If the KVET attorney, in consultation with KVET, chooses to go forward with the forfeiture process through civil litigation, the claimant will be informed as such and the $250.00 fee will not be assessed.

POLICY CONSIDERATIONS

None

COMMUNITY RESOURCES CONSULTED

The community resources that were consulted were KDPS, KVET and the Kalamazoo County Prosecutor's Office.

FISCAL IMPACT

Passage of this resolution will result in a more positive fiscal impact in that it will cover costs incurred by the City of Kalamazoo.

ALTERNATIVES

The only alternative to not adopting this resolution is to stop enforcing the forfeiture law.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Jerome R. Kisscorni, Assistant City Manager & Director of Economic Development

PREPARED BY: John W. Kneas, Assistant City Attorney

DATE: 3/29/2017

SUBJECT: Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park

RECOMMENDATION

It is recommended that the City Commission adopt a resolution to rescind and remove restrictions, covenants and development standards for Davis Creek Business Park and authorize the City Manager to sign the Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park.

BACKGROUND

The approximate 34 acre site that formerly housed Lakeside Refinery was initially acquired over several years by the city under the delinquent tax reversion program. The property was then transfered to the Brownfield Redevelopment Authority (BRA) to redevelop the site into a certified business park – known as Davis Creek Business Park (DCBP). To allow for flexibility in redevelopment options (and to avoid the platting requirements of the Land Division Act) BRA and the City became joint owners of DCBP, which was officially opened on October 24, 2007. The goal for DCBP was a mixed-use project (consisting of approximately 8 separate parcels) that integrated business development with sustainable, environmentally-sensitive site design. As a result on March 25, 2008 BRA recorded a Declaration of Restrictions, Covenants and Development Standards for Davis Creek Business Park (DCBP Restrictions). While the DCBP Restrictions comprised some mandatory standards, the focus was on flexible design and site improvement options to stimulate further discussion towards sustainable, environmentally-sensitive site design. Consisting of 100+ pages, these guidelines proved cumbersome.

Since the official opening of DCBP, BRA has attempted to market it to developers or interested parties to relocate an existing business or a start-up company. There has been little or no interest, in part due to the recession of 2008, but more significantly the DCBP Restrictions which rendered any proposed project cost prohibitive. Considering the industrial nature and uses in the surrounding area of DCBP, City staff has concluded that the best way to develop DCBP is through rescinding and removing the DCBP Restrictions. By doing so will provide BRA more flexibility in developing DCBP and returning any development parcels to the tax rolls. (In fact, BRA is currently in negotiations with an interested party in purchasing – in phases – a significant portion of the 18+ acres of developable land. The hurdle in those negotiations centers on the DCBP Restrictions.)

DCBP, nonetheless, will remain subject to normal City zoning requirements and storm water controls. In addition, any property sales are subject to BRA and City approval. Lastly, there is a conservation easement on a portion of the western portion of the property that acts as an environmental safeguard.

On March 16, BRA approved the attached resolution to rescind and remove restrictions, covenants and development standards for Davis Creek Business Park and has signed the document to that effect that will be recorded with the Register of Deeds upon approval by the City Commission.

COMMUNITY RESOURCES CONSULTED

Other than the BRA, no other community resources were consulted.

FISCAL IMPACT

The lifting of the DCBP Restrictions will likely result in BRA reaching an agreement with the interested party and thus return a portion of DCBP back on the tax rolls.

ALTERNATIVES

The City Commission could decline to adopt the resolution, but this action is not recommended.

ATTACHMENTS:

Type	Description
Resolution	City Commission Recission Resolution
Resolution	BRA Resolution

CITY OF KALAMAZOO

RESOLUTION NO. _____

A RESOLUTION TO RESCIND AND REMOVE RESTRICTIONS, COVENANTS AND DEVELOPMENT STANDARDS FOR DAVIS CREEK BUSINESS PARK RECORDED AT INSTRUMENT NO. 2008-008843

Minutes of a regular meeting of the City of Kalamazoo held on April 3, 2017, at 7:00 p.m., local time, at the City Hall, 241 West South Street, Kalamazoo, Michigan.

PRESENT, Commissioners:

ABSENT, Commissioners:

The following preamble and resolution were offered by Commissioner _____, and supported by Commissioner _____.

RECITALS:

A. The City of Kalamazoo Brownfield Redevelopment Authority (BRA) and the City of Kalamazoo (City) own as joint tenants certain real property located along East Cork Street in the City of Kalamazoo, Kalamazoo County, Michigan, and commonly known as Davis Creek Business Park (DCBP).

B. DCBP emerged through the collaborated efforts of public and private partners to clean up the contamination that had resulted from the long-term operations of the former Lakeside Refinery. The goal behind DCBP was to develop the approximate 34 acre site into a mixed-use brownfield redevelopment project (consisting of approximately 8 separate parcels) that integrated business development with sustainable, environmentally-sensitive site design.

C. The official opening of DCBP as a certified business park to announce those development goals occurred on October 24, 2007. As further evidence of those goals the BRA recorded at Instrument No. 2008-008843 a Declaration of Restrictions, Covenants and Development Standards for Davis Creek Business Park (DCBP Restrictions).

D. Since the official opening of DCBP BRA has attempted to market it to developers or interested parties to relocate an existing business or as a start-up company. There has been little or no interest, in part due to the recession of 2008, but more significantly the DCBP Restrictions which rendered any proposed project cost prohibitive.

E. Considering the industrial nature and uses in the surrounding area of DCBP, City staff has concluded that the best way to develop DCBP is through rescinding and removing the DCBP Restrictions. By doing so will provide BRA more flexibility in developing DCBP and returning any development parcels to the tax rolls.

F. The rescission and removal of the DCBP Restrictions will not impact the 2 easements BRA granted to Michigan Department of Environmental Quality: (i) Agreement for Conservation Easement dated September 8, 2006, recorded as Instrument No. 2006-041675, and as subsequently corrected in recorded Instrument No. 2006-045115; and (ii) Grant of Easement dated January 14, 2008 and recorded January 25, 2008 as Instrument No. 2008-002550.

G. On March 16, 2017 BRA adopted a resolution to rescind and remove the DCBP Restrictions, and its chair has signed the Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park.

H. City Commission finds that the rescission and removal of DCBP Restrictions serves a legitimate public interest as noted above and therefore, approving the Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park is in the best interest of the city and its citizens.

NOW, THEREFORE, IT IS RESOLVED as follows:

1. The Declaration of Restrictions, Covenants and Development Standards for Davis Creek Business Park, and the Development Standards dated December 20, 2007, and recorded on March 25, 2008 at Instrument No. 2008-008843, are rescinded and removed.

2. The City Manager is authorized to sign the attached Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park.

3. City staff shall record the Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park with the Register of Deeds for Kalamazoo County.

AYES, Commissioners:

NAYS, Commissioners:

ABSTAIN, Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on April 3, 2017. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

_____
Scott A. Borling, City Clerk

Drafted by:
John W. Kneas
Assistant City Attorney
K:Attydocs\John\DCBP\BRA-res.RescissionDevStds.
03/10/17

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY

A RESOLUTION TO RESCIND AND REMOVE RESTRICTIONS, COVENANTS AND DEVELOPMENT STANDARDS FOR DAVIS CREEK BUSINESS PARK RECORDED AT INSTRUMENT NO. 2008-008843

Minutes of a regular meeting of the City of Kalamazoo Brownfield Redevelopment Authority held on March 16, at 7:30 a.m., local time, at the City Hall, 241 West South Street, Kalamazoo, Michigan.

PRESENT, Members: James Escamilla, Kevan Hess, Bobby J. Hopewell, Robert Miller, Patti Owens, Douglas Phillips

ABSENT, Members: Nathan Bolton, Frederick Brown, John MacKenzie, Thomas Schlueter, Nancy Troff

The following preamble and resolution were offered by Director Owens, and supported by Director Escamilla.

RECITALS:

A. The City of Kalamazoo Brownfield Redevelopment Authority (BRA) and the City of Kalamazoo (City) own as joint tenants certain real property located along East Cork Street in the City of Kalamazoo, Kalamazoo County, Michigan, and commonly known as Davis Creek Business Park (DCBP).

B. DCBP emerged through the collaborated efforts of public and private partners to clean up the contamination that had resulted from the long-term operations of the former Lakeside Refinery. The goal behind DCBP was to develop the approximate 34 acre site into a mixed-use brownfield redevelopment project (consisting of approximately 8 separate parcels) that integrated business development with sustainable, environmentally-sensitive site design.

C. The official opening of DCBP as a certified business park to announce those development goals occurred on October 24, 2007. As further evidence of those goals the BRA recorded at Instrument No. 2008-008843 a Declaration of Restrictions, Covenants and Development Standards for Davis Creek Business Park (DCBP Restrictions).

D. Since the official opening of DCBP BRA has attempted to market it to developers or interested parties to relocate an existing business or as a start-up company. There has been little or no interest, in part due to the recession of 2008, but more significantly the DCBP Restrictions which rendered any proposed project cost prohibitive.

E. Considering the industrial nature and uses in the surrounding area of DCBP, City staff has concluded that the best way to develop DCBP is through rescinding and removing the DCBP Restrictions. By doing so will provide BRA more flexibility in developing DCBP and returning any development parcels to the tax rolls.

F. The rescission and removal of the DCBP Restrictions will not impact the 2 easements BRA granted to Michigan Department of Environmental Quality: (i) Agreement for Conservation Easement dated September 8, 2006, recorded as Instrument No. 2006-041675, and as subsequently corrected in recorded Instrument No. 2006-045115; and (ii) Grant of Easement dated January 14, 2008 and recorded January 25, 2008 as Instrument No. 2008-002550.

G. BRA recommends that the City Commission for the City of Kalamazoo also adopt a similar resolution to rescind and remove the Development Standards.

NOW, THEREFORE, IT IS RESOLVED as follows:

1. The Declaration of Restrictions, Covenants and Development Standards for Davis Creek Business Park, and the Development Standards dated December 20, 2007, and recorded on March 25, 2008 at Instrument No. 2008-008843, are rescinded and removed, subject to the City Commission for City of Kalamazoo, as joint owner of DCBP with BRA, also adopting a resolution to rescind and removal the DCBP Restrictions.

2. The chair is authorized to sign the attached Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park.

3. City staff shall record the Rescission and Removal of Restrictions, Covenants and Development Standards for Davis Creek Business Park with the Register of Deeds for Kalamazoo County following the approval by the City Commission.

AYES, Members: James Escamilla, Kevan Hess, Bobby J. Hopewell, Robert Miller, Patti Owens, Douglas Phillips

NAYS, Members: None

ABSTAIN, Members: None

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City of Kalamazoo Brownfield Redevelopment at a regular meeting held on March 16, 2017. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

Martin Markos, Recording Secretary

Drafted by:
John W. Kneas
Assistant City Attorney
K:Attydocs\John\DCBP\BRA-res.RescissionDevStds.
03/13/17

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Laura J. Echtinaw, Legal Secretary

DATE: 3/14/2017

SUBJECT: Metro Act Right-of-Way Permit Authorization

RECOMMENDATION

It is recommended that the City Commission authorize the City Manager to execute a Bilateral Permit with Merit Network, Inc. ("Merit Network") pursuant to the Metropolitan Extension Telecommunications Right of Way Oversight (METRO) Act, MCL 484.3101 *et seq.* so as to permit the placement of fiber optic telecommunication lines within the City.

BACKGROUND

State law requires telecommunication operators to obtain right-of-way permits from the municipalities in which they install telecommunication facilities. Merit Network is a private non-profit corporation owned by 12 of Michigan's public universities (and includes Western Michigan University) that provides communication services between the universities and other educational institutions. In 2006 Merit Networks received City permission to install maintain fiber optic wire and associated equipment over approximately 355 feet on S. Dartmouth and Grand Streets to access the WMU Goldsworth Valley complex. That permission expired on December 31, 2016.

Merit Network seeks to renew the expired permit and receive additional authorization to run approximately 5150 feet (or nearly a mile) of fiber optic line along E. Vine St. (beginning east of Jasper St.) and S. Park St. (to W. Crosstown Pkwy.) so as to provide a telecommunications link to Kalamazoo Covenant Academy. Merit Network is seeking a Bilateral Permit under the METRO Act which grants it a 15 year term which can be renewed for 3 additional terms of 5 years each in the future. The Application Packet accompanying the request from Merit Network is complete and includes all the necessary support documents and evidence of statutorily required insurance coverage.

POLICY CONSIDERATIONS

none

COMMUNITY RESOURCES CONSULTED

none consulted

FISCAL IMPACT

None. As Merit Network is an exempt non-profit educational institution, it is exempt from the $500 application fee or the yearly per-foot right of way State assessment.

ALTERNATIVES

The City has 45 days from when it receives a complete request to grant or deny a permit; failure to grant or deny a permit request exposes the City to fines of up to $40,000 a day. The City Commission could act to deny the request, but Merit Network could appeal the denial to the Michigan Public Service Commission. If the denial by the City was deemed wrongful by the MPSC, the City would face fines and payment of Merit Network's attorney fees. Denial of the request is not recommended.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: James J. Baker, PE, Public Services Director

PREPARED BY: Ryan Stoughton, EIT, Senior Civil Engineer – Wastewater

DATE: 3/13/2017

SUBJECT: Spring Valley Syphon Access Trail Utility Easement

RECOMMENDATION

It is recommended that the City Commission approve and accept the easement with the Kalamazoo County Land Bank for an operations and maintenance access trail to the Spring Valley Syphon; and authorize the City Manager to sign all documents on the City's behalf.

BACKGROUND

The existing upstream Spring Valley Syphon structure is currently inaccessible for operation and maintenance by City equipment. A permanent mix used access trail is to be constructed within the proposed easement. The mix use trail will not only be used for City equipment to access the structure but also as a connector of the Spring Valley Trail to the KRVT.

COMMUNITY RESOURCES CONSULTED

This recommendation did not require advisory board consultation or additional public input.

FISCAL IMPACT

The City of Kalamazoo will incur the cost of recording the easement with the Clerk-Register and $100 for consideration for the grant of the easement.

ALTERNATIVES

While the City Commission could decline to authorize the City Manager to execute this agreement, doing so is not recommended.

ATTACHMENTS:

Type	Description
Easement	Easement & Sketch

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT ("Agreement") is made effective this ___ day of _____, 2017 by and between the Kalamazoo County Land Bank Authority, a Michigan public body corporate, whose address is 1523 Riverview Drive, Suite A, Kalamazoo, Michigan 49004 ("Land Bank") and the City of Kalamazoo, a Michigan municipal corporation, whose address is 241 West South Street, Kalamazoo, Michigan 49007 ("City").

Recitals

A. Land Bank is the fee simple owner of a parcel of real property located in the City of Kalamazoo, Kalamazoo County, Michigan, described on the attached **Exhibit A** ("Land Bank Parcel").

B. City desires to acquire an easement over the Land Bank Parcel for the purpose of providing a trail to connect to the Kalamazoo River Valley Trail (the "KRVT") with City's trails at Spring Valley Park.

C. Land Bank is willing to grant an easement to City for the limited use as described herein on the terms and conditions contained in this Agreement.

D. This Agreement is made and given for consideration of less than $100.00. This instrument is exempt from state and county transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a) as a conveyance where the consideration is less than $100.00.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Land Bank and City agree as follows:

1. Grant of Trail Easement, Temporary Easement for Construction, and Maintenance Easement. Land Bank hereby grants and conveys to City a 30 foot wide non-exclusive perpetual trail easement ("Trail Easement") for walking, running, biking and rollerblading to and from the trail systems referenced above, over and across the Land Bank Parcel, as more particularly described on Exhibit B attached to this Agreement ("Easement Area"). Since the Easement Area is not yet improved, Land Bank hereby grants to City a temporary easement for the purposes of permitting City to construct the improvements necessary to allow use of the Easement Area for the purposes stated in this Agreement ("Construction Easement"). This temporary Construction Easement shall remain in effect until the date City completes construction of the improvements to the Easement Area. Land Bank further grants to City a non-exclusive easement on, over, across and through the Easement Area and those portions of the Land Bank's Parcel that are immediately adjacent to the Easement Area and are reasonably necessary for City to complete its maintenance obligations set forth below in this

Agreement ("Maintenance Easement"). The Trail Easement, Construction Easement, and Maintenance Easement shall be collectively referred to in this Agreement as the "Easement". This Easement shall be for the use by City and its agents, employees, contractors, invitees, licensees, and guests as well as by members of the public (collectively, "Affiliates").

2. Motorized Use of Easement. City may use motorized vehicles on the Easement in order to fulfill any construction or maintenance obligations under this Agreement, should it need to access other trails for the purpose of maintaining the same, or in cases of emergency. Notwithstanding anything to the contrary contained in this Agreement, members of the public may not use motorized vehicles on the Easement at any time or for any reason. However, this restriction does not apply to individuals with physical disabilities and their use of electric wheelchairs/scooters.

3. Obstructions. The Easement Area shall remain open and unobstructed by any buildings, fences, trees, barriers, banners, or other structures, so as to permit City and its Affiliates unimpeded access across the Easement Area in accordance with the terms of this Agreement. Furthermore, the location of the Easement may not be changed, altered or modified in any way without the written approval of both the City and the Land Bank.

4. Repair and Maintenance. City shall repair and maintain, at its sole cost, the Easement Area in a good and passable condition consistent with the practices prevailing for the operation of trails of similar quality in the City of Kalamazoo, Kalamazoo County, Michigan.

5. Improvements. Except as otherwise provided herein, City, at its sole cost, may upgrade or otherwise make improvements to the Easement Area.

6. Encumbrances. The Easement is made subject to all covenants, conditions, restrictions, encumbrances, and easements of record for the Land Bank Parcel as of the date this Agreement is recorded. City acknowledges that Land Bank may grant other easements over and across the Land Bank Parcel so long as such easements do not interfere with the use of the Easement by City.

7. Signs. City may install signage on the Easement Area to identify the trail, provide directions, or to note the restrictions in this Agreement on use of the trail (i.e., for walking, running, biking or rollerblading only). City shall be responsible at its sole cost, for maintaining, repairing and replacing any signage.

8. Indemnification and Insurance. Without waiving any rights to assert governmental immunity from claims asserted by a third party, City shall defend, indemnify and hold Land Bank harmless from any liability for any loss, damage, injury, or other casualty to persons or property caused by City or its Affiliates and related to the use of the Easement or by City's failure to abide by the terms of this Agreement. During the term of this Easement the City will maintain and procure property and liability coverage applicable to the obligations hereunder in amounts satisfactory to the Land Bank, and will provide Land Bank with certificates evidencing such coverage upon Land Bank's request for the same.

9. Duration and Effect. The Easement shall burden the Land Bank Parcel, shall continue in effect perpetually, and constitute an easement and a covenant running with the land; but nothing contained in this Agreement shall be construed as a conveyance by Land Bank of its rights in the Land Bank Parcel. Land Bank shall automatically be released from all liability thereafter arising under this Agreement upon its conveyance of its entire interest in the real property burdened by this Agreement.

10. Miscellaneous. This Agreement may be amended, modified or terminated (in whole or in part) from time to time by a written document executed and acknowledged by Land Bank and City and duly recorded in the Kalamazoo County Register of Deeds, Michigan, or in such other office as may from time to time by law be charged with the duty of maintaining the public records of Kalamazoo County, Michigan, and shall not otherwise by amended, modified or terminated during the term hereof. The terms and conditions of this Agreement shall bind and benefit Land Bank and City and their respective heirs, successors, personal representatives and assigns. This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan. This Agreement contains the entire understanding of City and Land Bank and the parties acknowledge that there have been no representations or understandings other than those expressly set forth in this Agreement.

KALAMAZOO COUNTY
LAND BANK AUTHORITY

By:_____

Its:_____

CITY OF KALAMAZOO

By:_____
James K. Ritsema
Its: City Manager

STATE OF MICHIGAN)
: ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, the _____ of the Kalamazoo County Land Bank Authority, a Michigan public body corporate, on behalf of the public body corporate.

_____

Notary Public; Kalamazoo County, _____
My commission expires: _____
Acting in the County of: _____

STATE OF MICHIGAN)
: ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by James K. Ritsema the City Manager of the City of Kalamazoo, a Michigan municipal corporation on behalf of the municipal corporation.

_____

Notary Public; Kalamazoo County, _____
My commission expires: _____
Acting in the County of: _____

PREPARED BY AND WHEN RECORDED
RETURN TO:

Ian R. Kennedy
Warner Norcross & Judd, LLP
401 East Michigan Avenue
Suite 200
Kalamazoo, Michigan 49007
269-276-8111
15524100

EXHIBIT A
LEGAL DESCRIPTION OF LAND BANK PARCEL

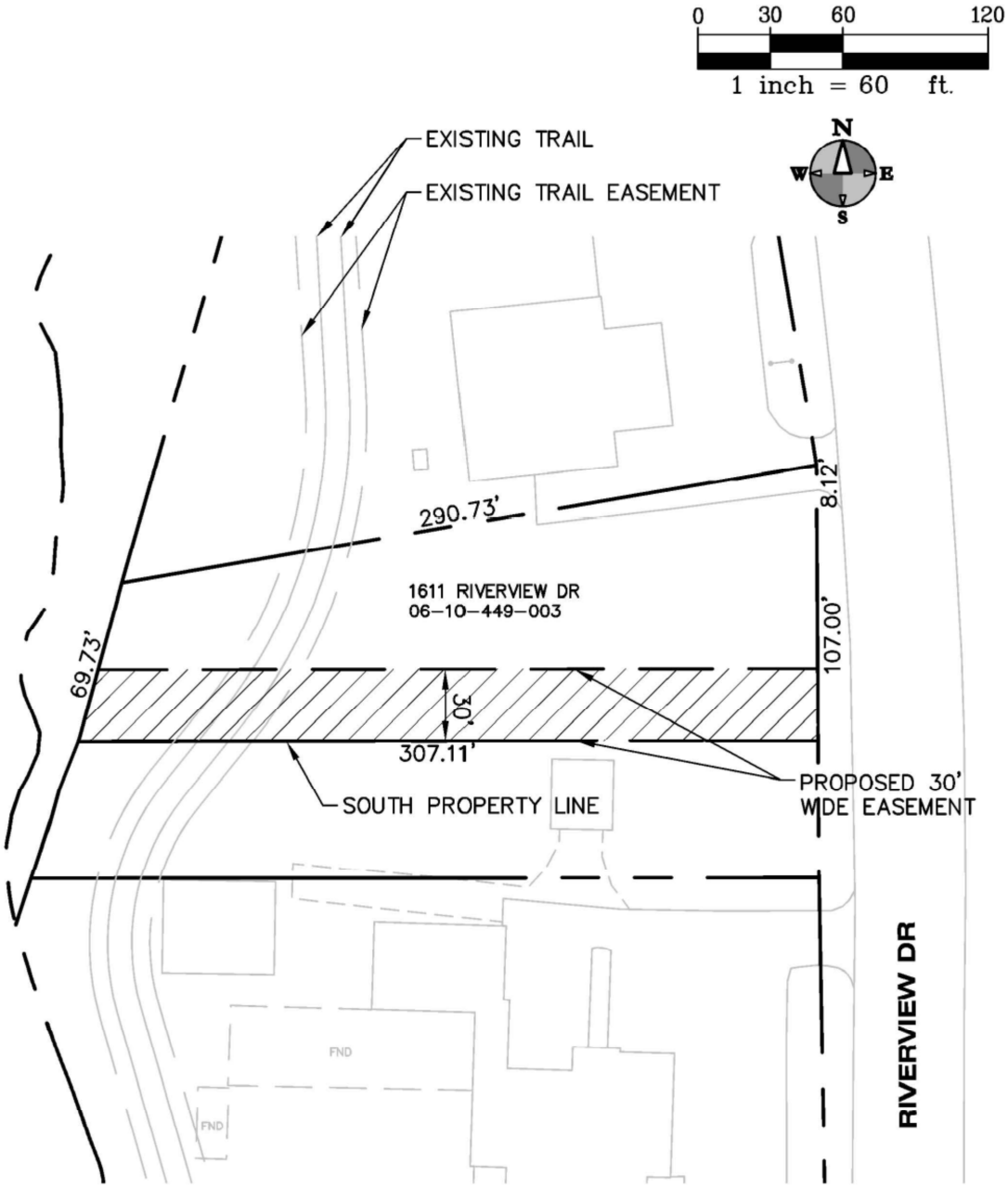
Real property located in the City of Kalamazoo, Kalamazoo County, Michigan, described as follows:

PART OF THE SOUTHEAST 1/4 OF SECTION 10 TOWN 2 SOUTH RANGE 11 WEST AND SOUTHWEST 1/4 OF SECTION 11 TOWN 2 SOUTH RANGE 11 WEST BEGINNING IN THE CENTER LINE OF RIVERVIEW DRIVE AT A POINT 1583 FT NORTH OF THE SOUTHWEST CORNER OF SECTION 11; THENCE S00°14'00"E ALONG THE CENTER LINE OF RIVERVIEW DRIVE 107.00 FT; THENCE N89°49'00"W 307.11 FT TO THE EASTERLY RIGHT-OF-WAY LINE OF THE MICHIGAN RAILWAY COMPANY; THENCE N16°39'29"E ALONG SAID RIGHT-OF-WAY 69.73 FT; THENCE N80°44'45"E 290.73 FT TO THE CENTER LINE OF RIVERVIEW DRIVE; THENCE S00°14'00"E 8.12 FT TO THE POINT OF BEGINNING, EXCLUDING THE EASTERLY 33 FT FOR RIVERVIEW DRIVE.

Parcel ID No. 06-10-449-330

EXHIBIT B
EASEMENT

An easement occupying the South 30 Feet of the parcel of land described at Exhibit A, also known as Parcel ID No. 06-10-449-330. The easement contains 9,034 square feet or 0.207 acres, more or less, and is depicted below.



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Jeff Chamberlain, Deputy City Manager

PREPARED BY: John W. Kneas, Assistant City Attorney

DATE: 3/23/2017

SUBJECT: Downtown KRVT Non-Motorized Path Easement Agreements

RECOMMENDATION

It is recommended that the City Commission approve and authorize the City Manager to sign each of the Downtown Kalamazoo River Valley Trail Non-Motorized Path Easement Agreements (KRVT Easement) with the Board of Trustees for Western Michigan University, the Board of Trustees for Kalamazoo Community College, Downtown Tomorrow Inc., West Michigan Cancer Center, Kalamazoo County Community Mental Health Authority and Number 39, LLC.

BACKGROUND

The KRVT Easements reflect the portions of each owner's properties that are required to construct and complete the trailway through the downtown (KRVT Extension); the construction of which began last year after the City Commission accepted the $748,000 donation from the Parks Foundation and awarded the construction contract to Peters Construction Company. The KRVT Extension represents the collaborative efforts of the Parks Foundation to provide the majority of the funding, the City to undertake the construction, the County of Kalamazoo to maintain the trailway upon completion of the construction, and the property owners' cooperation to provide the needed land at a cost of less than $100. The attached map of the KRVT Extension depicts the route the extension will take through the listed parcels under the KRVT Easements.

Since last year City staff has worked with the property owners and their legal representatives to reach a consensus on the route of the KRVT Extension, the amount of property needed from each property owner and the language for each KRVT Easement. Except for minor changes unique to a property owner, the attached KRVT Easement for Downtown Tomorrow, Inc. represents the substantive provisions in each agreement.

Since some of the KRVT Extension will go through parcels within the Arcadia Creek West area that are under a purchase agreement with MW Acquisitions, LLC (an entity established by PlazaCorp), it agrees with the route of the trailway and the easements for it.

COMMUNITY RESOURCES CONSULTED

Besides working with the various property owners impacted by the KRVT Extension, Downtown Development Authority, the County and its Parks Department, and the Parks Foundation no other community resources were consulted.

FISCAL IMPACT

The City Commission previously approved the budget for the construction of the KRVT Extension. The costs to acquire and record the KRVT Easements are minimal. The long range benefit lineal parks and trailways provide to the public as recreational facilities cannot be overlooked, especially with the proposed development of the Arcadia Creek West area.

ALTERNATIVES

The City Commission could decline to approve each of the KRVT Easements, but this action is not recommended.

ATTACHMENTS:

Type	Description
Map	KRVT Extension Map
Easement	KRVT Non-Motorized Path Easement Agreement - Downtown Tomorrow, Inc.

THE CITY OF Kalamazoo

DEPARTMENT OF PUBLIC SERVICES - Engineering

EXISTING CONDITIONS / REMOVALS

E. MICHIGAN RIVERVIEW - WALLACE

		SCALE	REVISIONS
SURVEYED	FTCH		
DESIGNED	MGJ		
DRAWN	RMR	VERTICAL NONE	1.
QA/QC	OTD	HORIZONTAL 1" = 60'	
ENG PROJ #		DATE 12/22/16	

GRAPHIC SCALE

60 0 30 60

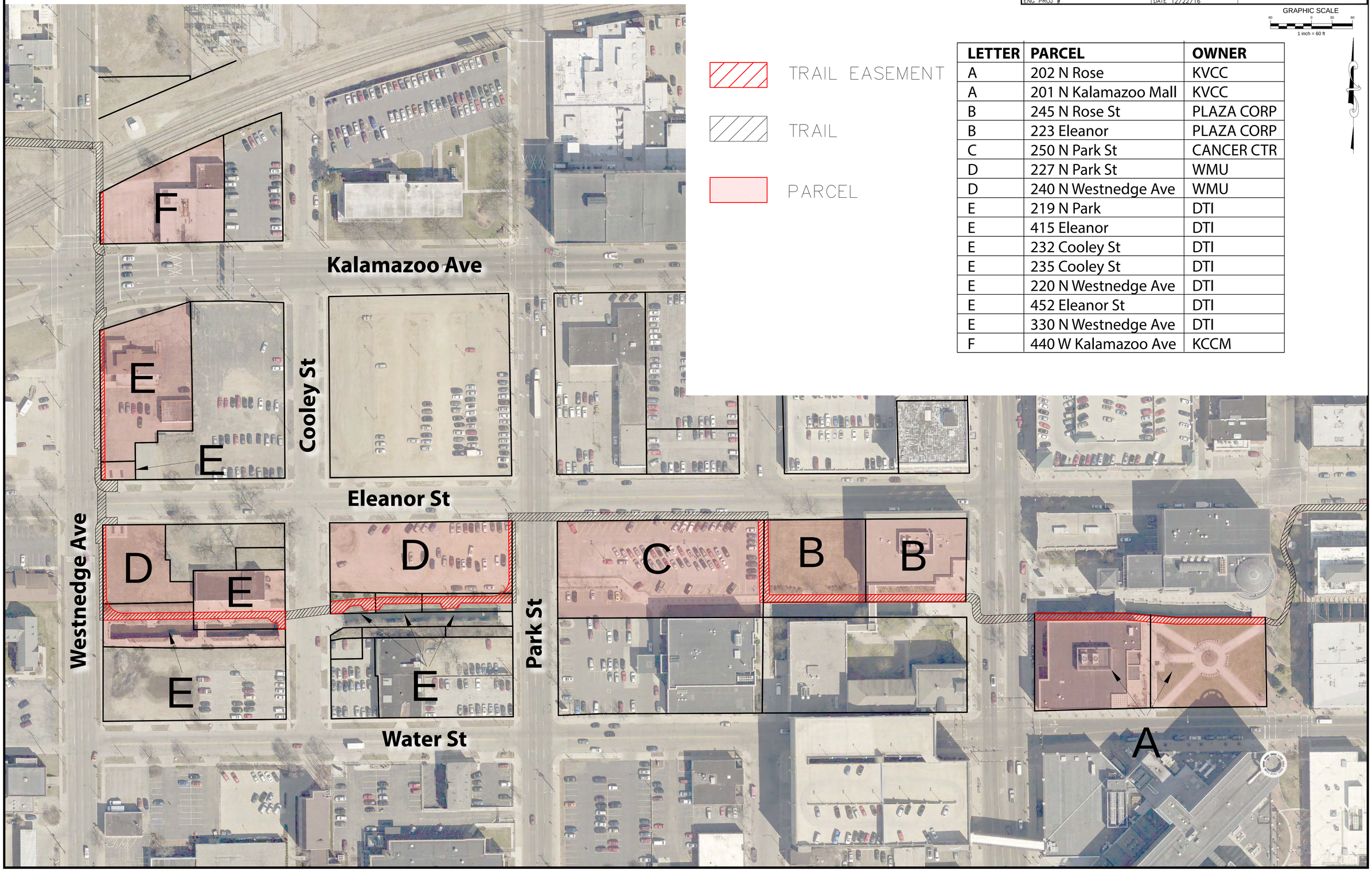
1 inch = 60 ft

TRAIL EASEMENT

TRAIL

PARCEL

LETTER	PARCEL	OWNER
A	202 N Rose	KVCC
A	201 N Kalamazoo Mall	KVCC
B	245 N Rose St	PLAZA CORP
B	223 Eleanor	PLAZA CORP
C	250 N Park St	CANCER CTR
D	227 N Park St	WMU
D	240 N Westnedge Ave	WMU
E	219 N Park	DTI
E	415 Eleanor	DTI
E	232 Cooley St	DTI
E	235 Cooley St	DTI
E	220 N Westnedge Ave	DTI
E	452 Eleanor St	DTI
E	330 N Westnedge Ave	DTI
F	440 W Kalamazoo Ave	KCCM



NON-MOTORIZED PATH EASEMENT AGREEMENT

This Non-Motorized Path Easement Agreement ("Easement Agreement") is made as of this _____ day of_____, 2017, between Downtown Tomorrow, Inc., a Michigan nonprofit corporation, ("DTI") and referred to as "Grantor", whose address is 141 East Michigan Avenue, Suite 501, Kalamazoo, Michigan 49007, and the City of Kalamazoo, a Michigan municipal corporation, ("City"), whose address is 241 West South Street, Kalamazoo, Michigan 49007, and the County of Kalamazoo, a Michigan municipal corporation, ("County"), whose address is 201 West Kalamazoo Avenue, Kalamazoo, Michigan 49007. The City and County are collectively referred to as "Grantee".

BACKGROUND

A. The parties recognize that recreational facilities are an integral part of the vitality and well-being of a community. The parties also acknowledge that non-motorized lineal parks and trailways are an important component of these recreational facilities such as the Kal-Haven Trail and the Kalamazoo River Valley Trail ("KRVT") (collectively "Trailways").

B. The City, County and Parks Foundation of Kalamazoo County ("Foundation") have engaged in a collaborative effort to connect the Kal-Haven Trail and the KRVT. In an agreement dated December 6, 2016, between the City and the Foundation the Foundation agreed to provide a grant up to $748,000 towards the cost extending the Trailways through the downtown of the City. Once the Trailways extension is completed the County assumes responsibility to operate and maintain this extension in reasonable, park-like condition under an agreement with the City dated November 15, 2016. (These 2 agreements are collectively referred to as the "Trailway Agreements"). In order for the City to construct and establish an extension of the trailways an easement area (referred to as the "Non-Motorized Path") is necessary on, over and across Grantor's property ("Grantor's Property"), described on attached **Exhibit "A"**, for the benefit and use of the general public in accordance with the terms and conditions of this Easement Agreement, including Grantees' responsibility to maintain, repair and restore the Non-Motorized Path. A significant portion of the Non-Motorized Path will include an already existing sidewalk/pedestrian path ("Sidewalk") abutting the north side of Arcadia Creek.

C. Grantor's Property consists of seven parcels commonly identified as 220 North Westnedge Avenue, 232 and 235 North Cooley Street, 415 (rear) and 219 North Park Street. The Non-Motorized Path is depicted and more fully described on the surveys by Williams & Works, attached as **Exhibits B-1** through **B-5.**

NOW, THEREFORE, in consideration of the above, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Easement. Grantor grants to Grantee, for the benefit of itself and the public at large, a nonexclusive easement legally described on attached **Exhibit B-1** through **B-5** on, over, upon and across the

Non-Motorized Path for the purposes of walking, jogging, hiking, biking, roller-blading, roller-skating and other reasonable and normal pedestrian uses associated with those activities ("Permitted Activities"). These activities also apply to individuals with physical disabilities and their use of electric wheelchairs/scooters.

A. The City shall promptly proceed with the construction and establishment of the Non-Motorized Path. Construction will require the City to entirely replace the Sidewalk with material that substantially conforms to the composition of the Sidewalk. The City shall relocate, replace or repair existing improvements and accessories such as handrails, benches, trash receptacles and lights ("Amenities") if required for the construction of the Non-Motorized Path.

B. Motorized Vehicles are prohibited, except those which are owned, operated and controlled by the Grantee for purpose of accessing the Non-Motorized Path in cases of emergency and to the extent necessary to discharge Grantee's maintenance, repair and restoration obligations under this Easement Agreement. Further, the Grantor, its successors and assigns as owner of the real property and improvements located on that property which abut the Non-Motorized Path, as well as their guests, employees, invitees, contractors and agents, are expressly authorized to cross over the Non-Motorized Path with vehicular and/or pedestrian traffic, including, without limitation, connection to parking, drives and/or driveway facilities and building and improvements located on such property.

2. Maintenance.

A. By Grantee. Grantee shall, at its sole cost and expense, maintain, repair and restore the Non-Motorized Path and those Amenities installed by Grantee in the construction of the Non-Motorized Path. The obligation to maintain, repair and restore the Non-Motorized Path on the part of the Grantee shall include landscaping, such as, but not limited to, mowing and trimming grass, vegetation control, sign maintenance, snow removal and otherwise keeping the Non-Motorized Path in reasonable park-like, safe and functional condition, order and repair. Grantee may use that portion of Grantor's Property abutting the Non-Motorized Path temporarily during the construction, operation, maintenance, repair, or replacement of the Non-Motorized Path. Grantor, and its successors in interest, as owner of the fee to Grantor's Property shall maintain, repair and restore the Amenities which were existing and not disrupted or damaged at the time of construction and establishment of the Non-Motorized Path by the City. The Amenities, whether existing at the time of construction or installed by the City shall be maintained, repaired and restored in a manner and quality consistent with and complimentary to the Amenities located on Blocks 3 and 4 immediately East of said Blocks 1 and 2.

The Non-Motorized Path shall at all times be maintained in a good, functional, and aesthetically pleasing condition. Grantee shall not permit the Non-Motorized Path to become dilapidated, fall into a state of disrepair or otherwise substantially decline in condition. Grantee shall keep Grantor's Property free from any and all encumbrances and liens relating to or arising out of any work conducted by it, its employees, agents or contractors. Grantee shall repair, to the reasonable satisfaction of Grantor or its representative, any damage it shall cause to Grantor's Property, including without limitation, any driveways, roads, fences, utilities, signs or other improvements, whether such damage is caused by the construction, maintenance, repair, or restoration of the Non-Motorized Path. After completing any construction, maintenance, repair, or restoration to the Non-Motorized Path, Grantee shall leave Grantor's Property in good condition, shall restore Grantor's Property to its existing condition immediately prior to such entry by Grantee and shall remove all debris and equipment resulting from or used in connection with said construction, maintenance, repair or restoration. Grantee agrees to use its best efforts to conduct its activities on the Non-Motorized Path in a manner that does not inconvenience Grantor's use of the Grantor's Property or interrupt any business operations of Grantor.

B. By Grantor. Grantor may, at any time and upon no less than twenty-four (24) hours prior notice to Grantee, enter upon the Non-Motorized Path for purposes of maintaining, repairing, and/or replacing any portion of the Grantor's Property and improvements thereon.

3. Non-Exclusive. The use by Grantee and the public is not exclusive, but Grantor,its invitees and guests shall not use the Non-Motorized Path in a manner that is inconsistent with or interferes with the Grantee's and the public's use of the Non-Motorized Path, including preventing the creation or placement of fences, picnic tables, or other objects on the trail that would inhibit or substantially interfere with that intended use, except Grantor, including its successors and assigns, may, to the extent reasonably necessary to serve its purposes in connection with the Grantor's Property, temporarily block, close, obstruct or otherwise disturb the Non-Motorized Path. Grantor shall give Grantee not less than twenty-four (24) hours' notice prior to conducting activity which may so disturb the Non-Motorized Path except in the case of emergency (in which case Grantor shall notify Grantee as soon as reasonably possible after commencing the activity). If a third party enters upon and disrupts the condition of this Easement pursuant to a grant of right from Grantor under this Paragraph 3, such third party shall restore the Non-Motorized Path to substantially the same condition as existed prior to such activity within a commercially reasonable time after the cessation of such activity.

Grantor, its successors and assigns, shall be permitted to construct improvements on Grantor's Property up to and abutting the Non-Motorized Path. Grantor shall also be permitted to install signage in accordance with local laws and ordinances.

4. No Warranties. Grantee's rights are expressly subject to: (a) all existing easements, restrictions, reservations, encumbrances and limitations, rights-of-way, claims, conditions, covenants, oil and gas leases and/or servitudes, and all matters of whatever kind or nature affecting the Grantor's property of record; (b) all matters that would be disclosed by an accurate survey or physical inspection of the Grantor's Property; (c) all applicable laws, codes, and ordinances; and (d) liens for property taxes and assessments that are not yet due and payable. This Non-Motorized Path is also made subject to any existing improvements of Grantor and utility lines lying within the bounds of the Non-Motorized Path and same shall remain as permitted encroachments in the Non-Motorized Path. GRANTOR DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED THAT THE PROPERTY SUBJECT TO THIS EASEMENT IS SUITABLE FOR A NON-MOTORIZED PATH OR AS TO THE CONDITION OF THE PROPERTY.

Grantor will obtain a partial release covering the Non-Motorized Path if there is a mortgage or other lien covering Grantor's Property. Otherwise, Grantee is accepting the Non-Motorized Path "AS IS".

5. Insurance. Grantee shall maintain, at its expense, general public liability insurance and property damage insurance against claims for bodily injury, personal injury or death and property damage occasioned by accident occurring upon, in or about the Non-Motorized Path. The insurance policies required by this Paragraph 5 shall provide coverage in an amount and on terms determined by Grantor and shall be reasonable in light of the intended use of the Non-Motorized Path. Grantor shall be named as an additional insured on the insurance policies required by this Paragraph 5, and upon request, Grantee shall provide Grantor a certificate of insurance evidencing that the policies of insurance required by this Paragraph are in full force and effect.

6. Indemnity.

A. Without waiving any rights to assert governmental immunity from claims asserted by a third party, the Grantee, including its successors or assigns, agrees to indemnify, defend and hold Grantor, including

its successors, assigns or subsequent property owners, and their employees, officers, officials or directors, members or shareholders, agents and representatives, harmless against any claims, liability and costs (including, without limitation, reasonable attorney's fees and costs) for any injuries to persons or damage to property resulting from the Grantee's wrongful act, negligence or wrongful omission, including the failure to reasonably and knowingly perform or conduct any of the activities relating to Non-Motorized Path under this Easement Agreement.

B. Grantor will indemnify, defend and hold each Grantee, including their employees, officers or officials, agents, representatives and contractors, harmless from any claims that arises from Grantor's willful interference with the intended use of the Non-Motorized Path (except as permitted under Paragraph 3) or against any claims, liability and costs (including, without limitation, reasonable attorney's fees and costs) for any injuries to persons or damage to property resulting from and as the proximate cause of the negligent acts or omission of Grantor while that person is using the Non-Motorized Path.

C. If any separate parcel within Grantor's Property is subsequently sold, transferred or conveyed to the Board of Trustees for Western Michigan University ("WMU"), this Paragraph 6 is subject to and amended by the following provision only for those parcels transferred to WMU:

"Without waiving any rights to assert governmental immunity from claims asserted by a third party, the Grantee, including its successors or assigns, agrees to indemnify, defend and hold Grantor, including its successors, assigns or subsequent property owners, and their employees, officers, officials or directors, members or shareholders, agents and representatives, harmless against any claims, liability and costs (including, without limitation, reasonable attorney's fees and costs) for any injuries to persons or damage to property resulting from the use of the Non-Motorized Path and adjoining areas by Grantee, its employees, agents or affiliates, or the public at large or perform or conduct any of the activities relating to Non-Motorized Path under this Easement Agreement."

7. Usage. The usage of the Non-Motorized Path shall generally follow any park rules established for the Kal-Haven and KRVT trailway systems with the recognition that the hours the Non-Motorized Path is used may extend beyond dawn to dusk given its location in the downtown area of the City. Grantee may, at its sole option, adopt and implement additional rules for usage and safety of the Non-Motorized Path, including appropriate signage, markings and barriers.

8. Relocation. Grantor, its successors and assigns shall have the right to move, relocate and reconfigure the Non-Motorized Path in furtherance of any approved redevelopment project as detailed in a site plan submitted to the City under its applicable zoning ordinances, at its sole cost and expense ("Relocated Non-Motorized Path"). Any Relocated Non-Motorized Path shall not change the essential characteristics of the existing Non-Motorized Path. If the Grantor, its successor or assigns, elect to reconfigure or relocate the Non-Motorized Path, it shall be constructed in substantial conformity with the dimensions, design features and construction materials presently utilized for the existing Non-Motorized Path. The undertaking to construct a relocated non-motorized path also includes an obligation to construct or install the Amenities.

9. Default. Grantee is considered in default under this Non-Motorized Path Easement Agreement upon the occurrence of any of the following events: (a) any failure of Grantee to perform any of the terms, conditions or covenants of this Easement Agreement for more than sixty (60) days after written notice of such default shall have been delivered to Grantee, or (b) if Grantor shall reasonably determine that Grantee has abandoned the Non-Motorized Path through nonuse or otherwise. In the event of a default by Grantee, in addition to all other rights and remedies otherwise available to Grantor at law or in equity, Grantor shall be permitted to remedy such default on Grantee's behalf and recover the reasonable cost thereof from Grantee and/or terminate this Easement Agreement and the rights of

Grantee and the public at large pursuant hereto. The Grantor shall be entitled to recover, as part of its costs, its reasonable attorney's fees and expenses.

10. Enforcement. This Easement Agreement shall be enforceable by DTI, its successors or assigns; or if DTI has ceased to exist without successors, then by the Downtown Development Authority of the City of Kalamazoo, a public corporation organized and existing pursuant to the authority of Act 197, Public Acts of Michigan, 1976 as amended, MCL 125.1651, *et seq.* ("DDA"), or its successors, or if both DTI and the DDA have ceased to exist, without successors, then the Trailway Agreements shall control any enforcement.

11. Term. The easement is perpetual and binding upon future owners of the Grantor Property, unless the Non-Motorized Path or Relocate Non-Motorized Path is no longer located on the Grantor Property.

12. Fencing. Grantor shall have the right, upon reasonable notice, subject to any required permits, to install reasonable fencing on Grantor's Property running parallel to and abutting the Non-Motorized Path in order to maintain separation between the Non-Motorized Path and the balance of Grantor's Property.

13. Binding Effect. The easements, and the rights and responsibilities set forth in this instrument, shall run with the land and shall be binding upon the successors and assigns of the parties.

14. Amendment. This Easement Agreement may not be amended, except by the written agreement of the parties hereto, or their successors and assigns.

15. Notices. All notices, demands and requests given or required to be given pursuant to this Easement Agreement unless provided for otherwise, shall be deemed properly served if mailed to the last previously furnished address of the parties in writing hereto, certified mail return receipt requested or by receipted express mail delivery service.

16. Severability. The invalidity or enforceability of any part or provision of this Easement Agreement shall not affect the validity or enforceability of any other part or provision.

17. Governing Law. This Easement Agreement shall be governed by the laws of the State of Michigan.

18. Article Headings. The article headings herein are for convenience and reference only and in no way define or limit the scope or content of this Easement Agreement or in any way affect its provisions.

19. Authority. Each of the undersigned persons executing this Easement Agreement represents and certifies that he has been fully empowered to execute and deliver this Easement Agreement.

20. Counterparts. This Easement Agreement may be executed in two (2) or more counterparts, all of which, when taken together, shall constitute one agreement. Each shall be deemed an original.

21. Recordation. This Easement Agreement shall be placed of record with the City and at its expense in the Office of the Register of Deeds of Kalamazoo County, Michigan.

22. Transfer Tax Exemptions. This instrument is exempt from the State transfer tax by reason of MCL 207.526(a) for the reason that the consideration is less than $100.00. It is also exempt from the County transfer tax by reason of MCL 207.505(a) because the consideration is less than $100.00.

23. Complete Agreement. This Easement Agreement and the exhibits thereto contain all of the representations and statements by the parties to one another, and express the entire understanding between them regarding this transaction. All prior and contemporaneous communications concerning this transaction are merged in and replaced by this Easement Agreement.

In Witness Whereof, the undersigned have executed this Easement Agreement effective as of the day and year set forth above.

GRANTOR:

DOWNTOWN TOMORROW, INC.,
a Michigan nonprofit corporation

By: _____

Its: _____

GRANTEE:

CITY OF KALAMAZOO,
a Michigan municipal corporation

By: _____
James K. Ritsema
Its: City Manager

KALAMAZOO COUNTY
BOARD OF COMMISSIONERS,
A Michigan municipal corporation

By: _____

Its: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, the _____ of Downtown Tomorrow, Inc., a Michigan nonprofit corporation, on behalf of the corporation.

_____
Notary Public
State of Michigan, County of _____
My Commission Expires: _____

[Acknowledgments continued on next page.]

STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me this ___day of ____ _____ 2016, by James K. Ritsema, the City Manager of the City of Kalamazoo, a Michigan municipal corporation, on behalf of the corporation.

_____ , Notary Public
State of Michigan, County of Kalamazoo
My Commission expires: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me this _____ day of _____ , 2016, by _____ , the_____ of the Kalamazoo County Board of Commissioners, a Michigan municipal corporation, on behalf of the corporation.

_____ , Notary Public
State of Michigan, County of Kalamazoo
My Commission Expires: _____

DRAFTED BY AND RETURN TO:
Michael D. O'Connor
Lennon, Miller, O'Connor & Bartosiewicz, P.L.C.
151 South Rose Street, Ste. 900
Kalamazoo, MI 49007
(269) 381-8834

DRAFTER HAS NOT EXAMINED AND MAKES NO REPRESENTATIONS
REGARDING LEGAL DESCRIPTIONS OR TITLE

EXHIBIT "A"

LEGAL DESCRIPTION OF THE GRANTOR'S PROPERTY

EXHIBITS "B-1" to "B-5"

DEPICTION AND LEGAL DESCRIPTIONS OF THE NON-MOTORIZED PATH

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Jeffrey Hadley, Public Safety Chief

PREPARED BY: John W. Kneas, Assistant City Attorney

DATE: 2/27/2017

SUBJECT: Buy/Sell Agreement – 1007 East Alcott Street

RECOMMENDATION

It is recommended that the City Commission approve and authorize the City Manager to sign the Buy/Sell Agreement with Dylan Wright regarding the purchase of the property located at 1007 East Alcott Street; and to further authorize the City Manager (or his designee) to sign all related documents to complete the closing on this purchase.

BACKGROUND

The attached Buy/Sell Agreement (Agreement) dated January 25, 2017 pertains to the property at 1007 E. Alcott St., which consists of a single family home on a parcel of approximately .4 acres. The purchase price for this property is $85,000. Public Safety has been planning for several years to replace the current Station #2 (1207 Bryant) which was constructed in 1952. The goal with rebuilding is to continue to have a strong presence in the Edison neighborhood. Furthermore, the current calls for service (CFS) data support the proposed location based on facility distribution and concentration of the CFS.

If the City Commission approves the Agreement then KDPS will begin the process to eventually demolish the home currently on the property (Mr. Wright is allowed to stay in the home for 90 days after closing).

COMMUNITY RESOURCES CONSULTED

KDPS and the Edison Neighborhood Association have discussed the department's desire to keep Station #2 in the neighborhood.

FISCAL IMPACT

In addition to the $85,000 purchase price, the Agreement obligates the City to pay all the closing costs of the Buyer in addition to the 6 % sales commission (divided equally among 2 real estate firms). The funds to purchase this property were included in the KDPS 2016 capital improvement project budget.

ALTERNATIVES

The City Commission could decline to approve the Agreement, but this action is not recommended.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: Bobby J. Hopewell, Mayor

PREPARED BY: Scott A. Borling, City Clerk

DATE: 3/30/2017

SUBJECT: Approval of the Mayor's Reappointments to Boards and Commissions

RECOMMENDATION

It is requested that the City Commission approve the Mayor's recommended reappointments to the following boards and commissions:

- the reappointment of Dan DeMent to the Retirement and Perprtual Care Investment Committees for a term expiring on March 31, 2020. This recommendation includes a request to waive City Commission Rule 12e regarding term limits.
- the reappointment of Randy Eberts to the Retirement and Perprtual Care Investment Committees for a term expiring on March 31, 2020. This recommendation includes a request to waive City Commission Rule 12e regarding term limits.
- the reappointment of Robert Salisbury to the Retirement and Perprtual Care Investment Committees for a term expiring on March 31, 2020. This recommendation includes a request to waive City Commission Rule 12e regarding term limits.
- the reappointment of James Coss to the Planning Commission for a term expiring on March 31, 2020.

BACKGROUND

City ordinance establishes that the Mayor appoints members to the Retirement and Perpetual Care Investment Committees (RIC/PCIC), and the Planning Commission. I have reviewed the Nomination Reports for Dan DeMent, Randy Eberts, and Robert Salisbury (RIC/PCIC); and James "Charlie" Coss (Planning Commission), and I have reappointed these members to their respective boards. I am now requesting City Commission approval of these reappointments as required by ordinance. The attached *Nomination Reports* describe the nominees' qualifications.

COMMUNITY RESOURCES CONSULTED

None

FISCAL IMPACT

There is no fiscal impact directly associated with these reappointments.

ALTERNATIVES

The City Commission could approve the reappointments, not approve them, or postpone action to a date certain.

ATTACHMENTS:

Type	Description
Report	Investment Committees Nomination Report
Report	Planning Commission Nomination Report

Advisory Boards and Commissions Appointee Nomination Report

City of Kalamazoo

RECOMMENDATION

The City of Kalamazoo Employees' Retirement System Investment Committee recommends the City Commission approve the reappointment of Robert Salisbury, Randy Eberts, and of Dan DeMent. The terms of their reappointment would expire on March 31, 2020.

SPECIAL REQUIREMENTS FOR THIS POSITION

As stated in the Pension Ordinance, the members of the Investment Committee must have a proven financial background, cannot be members of the Retirement System and, to avoid a conflict of interest, cannot be employed or associated with any organization that provides similar investment services to those retained or used by the Committee. Some of the other duties of the Committee members include formulating the investment policy and any amendments, establishing investment performance monitoring systems, ensuring the plan is properly audited and recommending investment managers, actuaries and other necessary services to the City Commission.

SELECTION PROCESS

It has been the long-standing practice to reappoint qualified members to the Investment Committee.

NOMINEE QUALIFICATIONS

Dual Board Memberships

Dual board membership between the Retirement Investment Committee and the Perpetual Care Investment Committee is by design. Mr. Salisbury, Mr. Eberts and Mr. DeMent are therefore sitting members of both committees.

Residency

Mr. Salisbury is a resident of Sarasota, Florida, although he maintains a summer residence in Kalamazoo, MI; Mr. Eberts resides in Oshtemo Township, and Mr. DeMent resides in the Winchell neighborhood. Given the strict membership qualifications, nevertheless the City Commission has appointed members who are not residents of the City. All three members are committed to the vitality and excellence of Kalamazoo.

Term Limits

It has been a long-standing practice to reappoint qualified members to the Investment Committee. Mr. Salisbury has been serving on the Investment Committee since 2005, and would be serving his fifth term. Mr. Eberts has been serving on the Investment Committee since 1997, and would be serving his seventh term. Mr. DeMent has been serving on the Investment Committee since 2005, and would be serving his fifth term.

Training, Experience, Education And Skills

Mr. Salisbury is retired CFO of Pharmacia & Upjohn Inc. and previously was CFO of The Upjohn Company where he had global financial responsibilities, including investment strategies and management. He has been a member of the Investment Committee for the City of Kalamazoo Employees' Retirement System, the Kalamazoo County Employees' Retirement System, and the Financial Investment Committee of the Kalamazoo Community Foundation since 2005 and was appointed Chair of the committees in 2007. He also serves as Chair of the Endowment Committee for the Kalamazoo Institute of Arts, is an investor and advisor to two local venture capital funds and is on the board of directors of two small public life sciences companies.

Mr. Eberts holds a Ph.D. in economics and is currently the Executive Director of the Upjohn Institute. He served in the first George Bush administration as a senior staff economist on the President's Council of Economic Advisers. Prior to joining the Institute, he was assistant vice president and economist of the Federal Reserve Bank of Cleveland and professor of Economics at the University of Oregon. Randy is the Chair of the Bronson hospital Board of Directors, a board member of the Harold and Grace Upjohn Foundation. He also serves as the Chair of the Endowment Committee for the Kalamazoo Symphony Orchestra. Randy has served on the investment committee of the City of Kalamazoo Employees' Retirement System since 1997, on the Kalamazoo County Employees' Retirement System since 1997, and on the Financial Investment Committee of the Kalamazoo Community Foundation since 2005.

Mr. DeMent is founder and principal in the law firm of DeMent and Marquardt, PLC, a Kalamazoo based estate planning practice specializing is estate law and wealth transfer matters. He is general counsel to the Kalamazoo Community Foundation, a board member of the Kalamazoo Community Foundation Real Estate Holdings, Inc., former trustee and chair of the Kalamazoo Valley Community College Foundation, and has been involved in a variety of other community activities. Dan has undergraduate and law degrees from University of Michigan, and is a member of the Michigan Bar Association. Dan has served on the investment committee of the City of Kalamazoo Employees' Retirement System since 2005, on the Kalamazoo County Employees' Retirement System since 2005, and on the Financial Investment Committee of the Kalamazoo Community Foundation since 2005.

Contribution To Diversity

All three nominees are of European-American descent.

NOMINATION RATIONALE

The Investment Committee chose to nominate all three members because of their expertise and longevity with the Committee. Continuity for this Committee is needed for several reasons. There is multi-year monitoring of styles and strategies of the fund managers. The investment policy looks at 1-5 years for the short term and 3-4 market cycles for long-term investments. The Committee has fiduciary responsibilities regarding the investment of the pension assets that requires a long-term commitment. This Committee also requires a significant time commitment because the Committee serves the County of Kalamazoo in the same capacity. Having the same membership for both Pension Plans has resulted in keeping administrative costs well below industry standards.

CITY CLERK'S CERTIFICATION

The nominees' qualifications regarding dual board memberships, residency, and term limits have been reviewed and verified by the City Clerk's Office.

_____

Scott A. Borling, City Clerk

Advisory Boards and Commissions Appointee Nomination Report

City of Kalamazoo

RECOMMENDATION

The Planning Commission recommends that Mayor Hopewell re-appoint **James Coss** to the Commission for an additional term that would expire on March 31, 2020. This would be Mr. Coss's second and final full term on the Commission.

SPECIAL REQUIREMENTS FOR THIS POSITION

Planning Commission members must be residents of the City of Kalamazoo and should have knowledge of the city as well as familiarity with the zoning ordinance and future land use plan, and an understanding of current issues in the community.

SELECTION PROCESS

Applicant History

Mr. Coss was first appointed to the Planning Commission in 2012. He initially served a partial term, and was then appointed to serve a full term in 2014. Mr. Coss is now eligible to serve a second full term.

Planning Commission Recommendation

The Planning Commission is recommending to Mayor Hopewell to re-appoint Mr. Coss to the additional term.

NOMINEE QUALIFICATIONS

Dual Board Memberships

Mr. Coss is not a member of another city advisory board.

Residency

Mr. Coss resides in the Hill N Brook neighborhood.

Term Limits

This would be the second full term for Commissioner Coss, and he would not be eligible for another term after this term.

Training, Experience, Education And Skills

Commissioner Coss has diligently served the Planning Commission during his terms. He has reviewed the requests that have come before him, participated in the discussions and debate, and issued thoughtful decisions. Mr. Coss has also served as the Vice Chair of the Planning Commission.

Contribution To Diversity

Mr. Coss is the only Commissioner that owns and operates a communication business, and is the only representative on the Commission of the Hill N Brook neighborhood.

NOMINATION RATIONALE

During his currently expiring term, Mr. Coss has demonstrated the skills and demeanor necessary to be an effective contributor to the deliberations and decision-making of the Planning Commission. He possesses a diverse background and is the only representative of his neighborhood. He shares a strong interest in the city and desires to serve the community.

CITY CLERK'S CERTIFICATION

The nominee's qualifications regarding dual board memberships, residency, and term limits have been reviewed and verified by the City Clerk's Office.

_____

Scott A. Borling, City Clerk

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: Scott A. Borling, City Clerk

DATE: 3/21/2017

SUBJECT: Approval of City Commission Minutes

RECOMMENDATION

It is recommended that the City Commission approve the minutes from its meetings on March 20, 2017.

ATTACHMENTS:

Type	Description
	Minutes March 20, 2017 Neighborhood Meeting
	Minutes March 20, 2017 Business Meeting

A neighborhood meeting of the Kalamazoo City Commission was held on Monday, March 20, 2017 at 6:00 p.m. in the Community Room at City Hall, 241 W. South Street.

Roll Call

COMMISSIONERS PRESENT:	Vice Mayor Don Cooney David Anderson Erin Knott Matt Milcarek Shannon Sykes
COMMISSIONERS ABSENT:	Mayor Bobby J. Hopewell* Jack Urban

Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.

Commissioner Excused

Commissioner Milcarek, seconded by Commissioner Anderson, moved to excuse the absences of Mayor Hopewell and Commissioner Urban. With a voice vote the motion passed.

Communications

An opportunity was given for miscellaneous communications, but no communications were offered.

Neighborhood Communications

Neighborhood communications were received next.

Representatives from the following neighborhood associations were present and addressed the City Commission:

<u>Edison Neighborhood Association</u>
Tammy Taylor, Executive Director

<u>Vine Neighborhood Association</u>
Steve Walsh, President

Edison Neighborhood Association

The Edison Neighborhood Association representatives:

- distributed the March/April 2017 edition of the *Edison Voice* newsletter.
- reported on the recent election of new board members.
- reported a neighborhood cleanup event called “Spring into the Streets” would take place on April 25th.

Vine Neighborhood Association

The Vine Neighborhood Association representative:

- thanked Community Police Officer Ryan Shank for his assistance during a recent string of breaking-and-enterings.
- discussed the Vine Street widening project and thanked City for stopping the project to get more citizen input.

*Mayor Hopewell arrived at 6:10 p.m.

Vine Neighborhood Association (cont'd)

- announced there would be a Building Blocks project on Vine Street between Rose Street and Westnedge Avenue.

- reported the Association had hosted a successful neighborhood dance event at Martini's in February.

Citizen Comments

When an opportunity was given for citizen comments, the following people addressed the City Commission:

Nehemiah Scudder, City resident, spoke about the lack of trash barrels at bus shelters.

Commissioner Comments

Finally, an opportunity was given for miscellaneous comments by City Commissioners.

Mayor Hopewell asked City Manager Ritsema to relay Mr. Scudder's concerns to Sean McBride, Executive Director of the Central County Transportation Authority (CCTA), and to provide Mr. Scudder with the CCTA meeting schedule.

Adjournment

The meeting adjourned at 6:13 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on April 3, 2017

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: April 3, 2017

A regular meeting of the Kalamazoo City Commission was held on Monday, March 20, 2017 at 7:00 p.m. in the City Commission Chambers at City Hall.

Roll Call

COMMISSIONERS PRESENT: Mayor Bobby J. Hopewell
Vice Mayor Don Cooney
David Anderson
Erin Knott
Matt Milcarek
Shannon Sykes
Jack Urban

COMMISSIONERS ABSENT: None

Also present were City Manager James Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.

Invocation

The invocation, given by Pastor Steve Johnson, Oakwood Bible Church, was followed by the Pledge of Allegiance.

Proclamation

Commissioner Anderson proclaimed March 2017 the *15th Annual March for Meals Month*. Dan Pontius, Nutrition and Transportation Manager for Senior Services of Southwest Michigan, accepted the proclamation.

Adoption of the Agenda

By unanimous consent the City Commission adopted its meeting agenda as presented.

Communications

City Manager Ritsema announced there would be City Commission work sessions on Monday, March 27th and Monday, April 10th at 6:00 p.m. in the Community Room at City Hall. The discussion topic of the March 27th meeting was the work being done through Shared Prosperity Kalamazoo to address youth development and generational poverty; and the discussion topic for April 10th was projects to be funded with the Foundation for Excellence (FFE). City Manager Ritsema noted no decisions had been made regarding the use of FFE aspirational project funding.

Consent Agenda

Consent Agenda items were presented as follows with a recommendation to approve the items with authorization for the City Manager to sign on behalf of the city:

- approval of a purchase order in the amount of $137,000.00 with the Ohio Drilling Company to perform one water production well replacement and four well rehabilitations and repairs for Production Wells 4-9 and 4-10 at Water Pumping Station 4, (2000 West Crosstown), and well rehabilitations for Production Wells 24-10 and 24-14A at Water Pumping Station 24 (Al Sabo).

- approval of a purchase order in the amount of $191,500.00 with Peerless-Midwest, Inc. to perform well rehabilitations and repairs for Production Wells 1-2, 1-4, and 1-5 at Water Pumping Station 1 (Central), 18-2A at Water Pumping Station 18 (Emerald), 24-2A at Water Pumping Station 24 (Al Sabo), and to replace production well 8-5 at Water Pumping Station 8 (East Kilgore).

- adoption of a **RESOLUTION** that establishes the emergency response fees and other charges which the District Court will impose on all individuals convicted of violating the City's operating while under the influence ordinance. This resolution replaces and updates Resolution 01-05e passed on January 8, 2001. — Resolution 17-18

- adoption of a **RESOLUTION** concurring with the provisions of a Kalamazoo County Brownfield Redevelopment Authority Brownfield Plan for PS 383, LLC, located at 383 South Pitcher Street. — Resolution 17-19

- adoption of a **RESOLUTION** approving application for a Michigan Natural Resources Recreation Passport grant in the amount of $75,000 for the development and rehabilitation of The Henderson Tot Lot Park. — Resolution 17-20

- approval of the following appointments and reappointments to boards and commissions:

  - the reappointment of **Tami Cox** to the Community Development Act Advisory Committee as an at-large member for a term expiring on March 31, 2020;

  - the reappointment of **Adam Roth** to the Community Development Act Advisory Committee as an at-large member for a term expiring on March 31, 2020;

  - the reappointment of **Amina Shakir** to the Community Development Act Advisory Committee as the Northside Neighborhood representative for a term expiring on March 31, 2020;

  - the reappointment of **Annie Sprague** to the Community Development Act Advisory Committee as an at-large member for a term expiring on March 31, 2020;

  - the appointment of **Jennette Tarver** to the Community Development Act Advisory Committee as the Eastside Neighborhood representative for a term expiring on March 31, 2020;

  - the reappointment of **Margaret Wilson** to the Community Development Act Advisory Committee as the Vine Neighborhood representative for a term expiring on March 31, 2020;

  - the reappointment of **Margy Belchak** to the Environmental Concerns Committee for a term expiring on January 1, 2020;

  - the reappointment of **Olga Button** to the Environmental Concerns Committee for a term expiring on January 1, 2020;

Consent Agenda (cont'd)

- the appointment of **Philip Dietrich** to the Environmental Concerns Committee for a term expiring on January 1, 2019;

- the appointment of **Nora Gimpel** to the Environmental Concerns Committee for a term expiring on January 1, 2019;

- the reappointment of **Paul Manstrom** to the Environmental Concerns Committee for a term expiring on January 1, 2020;

- the appointment of **George Russo** to the Environmental Concerns Committee for a term expiring on January 1, 2018;

- the appointment of **Aaron Wright** to the Environmental Concerns Committee for a term expiring on January 1, 2020;

- the reappointment of **Christina Anderson** to the Zoning Board of Appeals for a term expiring on March 31, 2020;

- the reappointment of **Chris Flach** to the Zoning Board of Appeals for a term expiring on March 31, 2018; and

- the reappointment of **Matt Lager** to the Zoning Board of Appeals for a term expiring on March 31, 2020.

- approval of the minutes from the City Commission neighborhood meeting on February 20, 2017 and business meeting on March 6, 2017.

- approval of a recommendation to hold until April 3, 2017 consideration of a Buy/Sell Agreement with Dylan Wright for the purchase of property located at 1007 East Alcott Street.

Commissioner Urban, seconded by Commissioner Milcarek, moved to approve the consent agenda requests and authorize the City Manager to sign all documents on behalf of the City.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Knott, Milcarek, Sykes, Urban, Vice Mayor Cooney, Mayor Hopewell

NAYS: None

Regular Agenda

Regular Agenda items were considered next.

Resolution 17-21 Supporting the Consolidated Dispatch Proposition

City Manager Ritsema read A RESOLUTION SUPPORTING THE KALAMAZOO CONSOLIDATED DISPATCH PROPOSITION FOR 911 FUNDING.

Resolution 17-21 Supporting the Consolidated Dispatch Proposition (cont'd)

An opportunity was given for citizens to comment on a resolution supporting the Kalamazoo Consolidated Dispatch Proposition for 911 System Funding, but no comments were offered.

Commissioner Sykes, seconded by Commissioner Knott, moved to adopt a **RESOLUTION** supporting the Kalamazoo Consolidated Dispatch Proposition for 911 System Funding.

Prior to a vote on the motion and in response to a question from Commissioner Urban, City Manager Ritsema clarified the $2.30 surcharge was per phone device, per month.

With a roll call vote this motion passed unanimously.

AYES: Commissioners Anderson, Knott, Milcarek, Sykes, Urban, Vice Mayor Cooney, Mayor Hopewell

NAYS: None

City Manager's Report

City Manager Ritsema provided the following reports and updates:

- Departmental Reports and Project Updates
- *Inside the City* newsletter, March 2017 edition
- February 2017 Purchases

City Manager Ritsema announced the promotions of Laura Lam to the position of Assistant City Manager and Rebekah Kik to the position of Community Planning and Development Director. City Manager Ritsema stated Assistant City Manager Lam would be focusing on the Foundation for Excellence.

Citizen Comments

When an opportunity was given for general citizen comments, the following people addressed the City Commission:

Nehemiah Scudder, City resident, spoke about the need for research on the long term effects of adding fluoride to the water supply.

Frank Warren, City resident, spoke about President Donald Trump's proposed budget and the elimination of funding for Meals on Wheels and other programs.

Esteban Blanco, City resident, inquired about opening a medical marijuana dispensary in the City.

City Commissioner Comments

Next, an opportunity was given for miscellaneous comments and concerns of City Commissioners.

Commissioner Milcarek stated the City was reviewing its options under the new state law regarding medical marijuana dispensaries, and he referred Mr. Blanco to the City Attorney for more information.

Commissioner Urban noted President Trump's proposed budget would eliminate Community Development Block Grants, and he suggested the

City Commissioner Comments (cont'd)

City consider what it could do to oppose the elimination of this funding. Commissioner Urban also suggested the City evaluate the impact of the President's proposed budget, should it be approved.

Commissioner Knott announced there would be a rally on March 22nd outside the offices of U.S. Representative Fred Upton to oppose the American Health Care Act.

Commissioner Sykes noted President Trump's proposed budget would eliminate funding for after school programs that were vital to the success of many students. Commissioner Sykes invited people to attend a Great Lakes Peace Jam event on March 22nd and an event in Bronson Park on March 25th regarding Enbridge Line 5.

Vice Mayor Cooney spoke about the programs that were eliminated in President Trump's proposed budget and urged people to contact their U.S. Representatives and Senators to express their opposition.

Mayor Hopewell spoke about the potential harm caused by President Trump's proposed budget, and he urged people to contact their elected officials to voice their concerns. Mayor Hopewell also urged people to encourage their friends and relatives to do the same.

Adjournment

The meeting adjourned at 7:40 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on April 3, 2017

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: April 3, 2017

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Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

PREPARED BY: Thomas C. Skrobola, Director of Management Services/Chief Financial Officer

DATE: 3/27/2017

SUBJECT: Amend Ordinance No. 1947 to provide for the use of a letter of credit, surety bond or insurance policy to fund the Bond Reserve Account for the 2017 Revenue Bonds of the Water Supply System

RECOMMENDATION

It is recommended that the City Commission adopt an ordinance to amend Ordinance No. 1947 to provide for the use of a letter of credit, surety bond or insurance policy to fund the Bond Reserve Account for the 2017 Revenue Bonds of the Water Supply System.

BACKGROUND

On March 6, 2017, the City Commission of the City of Kalamazoo (the "City") adopted Ordinance No. 1947, authorizing its Water Supply System Revenue and Revenue Refunding Bonds, Series 2017.
The City's Financial Advisors RW Baird and Bond Attorney, Miller Canfield have since conducted analysis to indicate the advantage of issuing a surety bond to cover a portion of the Water System's bond reserve requirements, reducing the amount of cash required to be deposited into the Bond Reserve Account. The approved Bonds included several hundred thousand dollars of deposit monies; the Surety Bonds will allow the City to reduce the amount of Bonds by $362,000, saving the City $168,000 in interest charges over the life of the Bonds.
In order to authorize the issuance of the Surety Bonds in place of the required Bond reserve deposit, the attached Resolution must be authorized by the City Commission.

COMMUNITY RESOURCES CONSULTED

None

FISCAL IMPACT

The adoption of the Resolution will save the City $168,000 in bond interest charges over the life of the bonds.

ALTERNATIVES

The City Commission may choose not to adopt this Resolution. This is not recommended, since the City would

pay $168,000 in additional interest fees over the life of the bonds to finance the bond reserve deposit.

ATTACHMENTS:

	Type	Description
🗋	Ordinances	Amending Ordinance 1947 re: Water Revenue Bonds

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CERTAIN PROVISIONS OF ORDINANCE NO. 1947 OF THE CITY OF KALAMAZOO ENTITLED:

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF WATER SUPPLY SYSTEM REVENUE AND REVENUE REFUNDING BONDS TO PAY THE COST OF THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, IMPROVEMENTS AND EXTENSIONS TO THE WATER SUPPLY SYSTEM OF THE CITY AND REFUNDING ALL OR PART OF REFUNDING OUTSTANDING BONDS OR THE WATER SUPPLY SYSTEM OF THE CITY; TO PRESCRIBE THE FORM OF THE BONDS; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF EQUAL STANDING OF THE SYSTEM; TO PROVIDE AN ADEQUATE RESERVE FUND FOR THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF THE REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE SYSTEM AND THE BONDS AND OUTSTANDING BONDS OF THE SYSTEM.

WHEREAS, on March 6, 2017, the City Commission of the City of Kalamazoo (the "City") adopted Ordinance No. 1947, authorizing its Water Supply System Revenue and Revenue Refunding Bonds, Series 2017 (the "Series 2017 Bonds"); and

WHEREAS, the City has received a proposal to provide for a surety bond to fund a portion of the bond reserve account for the Series 2017 Bonds to reduce the amount of cash required to be deposited into the Bond Reserve Account (as described below); and

WHEREAS, the City desires to amend certain provisions of Ordinance No. 1947 to provide for the use of a letter of credit, surety bond or insurance policy to fund the Bond Reserve Account for the Bonds of the Water Supply System.

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Definitions. Any capitalized terms used herein but not defined herein shall have the meanings assigned such terms in Ordinance No. 1947:

Section 2. Amendment to Section 12 of Ordinance No. 1947. Section 12 of Ordinance No. 1947 is hereby amended and restated in its entirety as follows:

> Section 12. Bond Reserve Account. The Reserve Account in the Bond and Interest Redemption Fund, as established by the Outstanding Ordinances shall be adjusted in such amounts, so that upon issuance of the Series 2017 Bonds, the Bond Reserve Account shall total a sum equal to the lesser of (a) the maximum annual principal and interest requirements on the Bonds outstanding after issuance of the additional Bonds, (b) 125% of the average annual debt service on the

Bonds after issuance of the additional Bonds, or (c) an amount equal to 10% of the principal amount of the Bonds (the "Bond Reserve Requirement"). The City may satisfy the Bond Reserve Requirement by cash, a letter of credit, a surety bond, or an insurance policy if the provider of issuer thereof shall be rated by a nationally recognized bond rating agency as high or higher than the Series 2017 Bonds at the time of the delivery of the Series 2017 Bonds. Except as hereinafter provided, the moneys credited to the Bond Reserve Account shall be used solely for the payment of the principal of, redemption premiums (if any) and interest on the Bonds as to which there would otherwise be a default. If at any time it shall be necessary to use the moneys or the letter of credit, surety bond or insurance policy credited to the Bond Reserve Account for such payment, then the moneys so used shall be replaced or repaid over a period of not more than 5 years, or such other period as required by the letter of credit, surety bond, or insurance policy securing the Bond Reserve Account, from the Net Revenues first received thereafter which are not required for current principal and interest requirements.

If a letter of credit, a surety bond, or an insurance policy is deposited into the Bond Reserve Account for Bonds issued on or after January 1, 2017, the Bond Reserve Account shall be segregated into separate accounts for Bonds issued before January 1, 2017 and for Bonds issued on or after January 1, 2017. For Bonds issued before January 1, 2017, the Reserve Requirement shall be satisfied exclusively by moneys deposited into the Bond Reserve Account pursuant to the Outstanding Ordinances. For Bonds issued on or after January 1, 2017, the Reserve Requirement may be satisfied by cash, letter of credit, surety bond or an insurance policy as described in this Section. In the event of a drawdown on the Bond Reserve Account, funds available to replenish cash in the Bond Reserve Account and to repay the issuer of a letter of credit, a surety bond, or an insurance policy shall be paid on a pro rata basis.

Section 3. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 4. Publication and Recordation. This Ordinance shall be published in full in the ***Kalamazoo Gazette***, a newspaper of general circulation in the City, qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the Issuer and such recording authenticated by the signatures of the Mayor and City Clerk.

Section 5. Effective Date. Pursuant to the provisions of Section 6 of Act 94, this Ordinance shall be approved on the date of first reading and accordingly this Ordinance shall immediately be effective upon its adoption.

Adopted and signed this 3rd day of April, 2017.

Signed: _____
Mayor

Signed: _____
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Commission of the City of Kalamazoo, County of Kalamazoo, Michigan, at a regular meeting held on the 3rd day of April, 2017, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following Members were present at said meeting: _____
_____
and that the following Members were absent: _____.

I further certify that Member _____ moved adoption of said Ordinance, and that said motion was supported by Member _____.

I further certify that the following Members voted for adoption of said Ordinance:
_____
and that the following Members voted against adoption of said Ordinance: _____
_____.

I further certify that said Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and City Clerk.

_____
City Clerk

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Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

REVIEWED BY: Clyde J. Robinson, City Attorney

PREPARED BY: John W. Kneas, Assistant City Attorney

DATE: 3/8/2017

SUBJECT: Purchase Agreement for Parking Ramp No. 4

RECOMMENDATION

It is recommended that the City Commission approve and authorize the City Manager to sign the Purchase Agreement for Parking Ramp No. 4 for the sale of this ramp to 306 Parking LLC.

BACKGROUND

The attached Purchase Agreement for Parking Ramp No. 4 follows extensive negotiations with 306 Parking LLC (an affiliate of PlazaCorp Realty Advisors, Inc.) (Developer). As a facility in the City's Parking System, which is subleased to the Downtown Development Authority (DDA), the negotiations included input from its representatives, attorney and DKI staff.

The factors behind the Agreement are as follows:

- Developer purchased the former Rose Street Market building which is located across the street from Ramp 4 at 303 North Rose Street (identified in the Agreement as "Arcadia Building").
- Developer has an agreement with a national hotel chain to redevelop the Arcadia Building for a hotel operation.
- That agreement requires Developer to own a nearby parking facility that will adequately meet the needs of the hotel and its guests.
- 44% of Ramp 4 is underutilized (250 spaces)
- The sale of Parking System assets was one of the recommendations of the Blue Ribbon Panel as a means of increasing revenues for the General Fund.
- The general terms for the sale of Ramp 4 were memorialized in a term sheet the parties signed effective as of January 6, 2017.

The Agreement provides:

- Sale price of $3,000,000 - $1,500,000 on date of closing and the remaining $1,500,000 payable in 60 consecutive monthly installments of $25,000 dollars with a balloon payment of the unpaid principal balance at the expiration of 60 months after closing. The sale will include equipment and personal property used in the maintenance and operation of Ramp 4 – to be itemized in a separate Bill of Sale.
- Developer has retained W.E. Upjohn Institute to provide an economic impact analysis regarding the hotel

development and potential future developments in the vicinity of Ramp 4 that Developer (or another PlazaCorp affiliate) owns or has under contract.

- The Developer has informed the residential and commercial tenants utilizing the Ramp of the pending sale, to include KVCC.
- The acceptance of this analysis within 60 days of its receipt by DDA and the City is required for the sale of Ramp 4, and will be confirmed under a resolution that DDA and City Commission will adopt.
- Developer will have 120 days to complete its due diligence.
- Developer will provide up to 100 parking spaces within Ramp 4 for hourly parkers at the same parking rates as charged by the City for hourly parkers in other ramps within the Parking System for a period of eight (8) years after the date of closing.

COMMUNITY RESOURCES CONSULTED

As noted above, DDA and DKI were actively involved in the negotiations for the sale of Ramp 4 and in the attached version of the Agreement. The Building Authority, as the official owner of Ramp 4, met on March 20, 2017 to approve the Agreement, the Parking Committee has approved the agreement, and DDA has approved the Agreement including waiving its Right of First Refusal under the Sublease.

Nearby residents and other users including Kalamazoo Valley Community College, Accretive Health and Kalamazoo County were notified of the sale.

FISCAL IMPACT

The initial $1,500,000 (minus other shared costs under the Agreement and the applicable closing costs) will go to the 2017 General Fund. The balance of the sale price will go to DDA, which is consistent with prior sales of Parking System assets. And once Developer owns Ramp 4 it will go onto the tax rolls.

Developer will provide up to 100 parking spaces within Ramp 4 for hourly parkers at the same parking rates as charged by the City for hourly parkers in other ramps within the Parking System for a period of eight (8) years after the date of closing.

ALTERNATIVES

The City Commission could decline to approve the Agreement, but this action is not recommended.

ATTACHMENTS:

	Type	Description
🗋	Agreement	Purchase Agreement
🗋	Background Material	Term Sheet
🗋	Background Material	Ramp 4 Usage Statistics
🗋	Report	Economic Impact Analysis

PURCHASE AGREEMENT FOR PARKING RAMP NO. 4

306 PARKING, LLC, a Michigan limited liability company, whose address is 200 West Michigan Avenue – Suite 201., Kalamazoo, Michigan 49007 ("Buyer"), and the CITY OF KALAMAZOO, a Michigan municipal corporation, whose address is 241 West South Street, Kalamazoo, Michigan 49007 (the "City"), the CITY OF KALAMAZOO BUILDING AUTHORITY, a public body corporate, whose address is 241 W. South Street, Kalamazoo, Michigan 49007 (the "Authority"), and the CITY OF KALAMAZOO DOWNTOWN DEVELOPMENT AUTHORITY, whose address is 141 East Michigan Avenue, Suite 501, Kalamazoo, Michigan 49007 ("DDA") (City, Authority and DDA shall be collectively referred to as "Seller"), enter into this Purchase Agreement ("Agreement") as of _____, 2017 (the "Dated Date"), for Seller to sell and Buyer to buy the real property and improvements located in Kalamazoo County, Michigan, known as Parking Ramp No. 4, and described on the attached Exhibit A (the "Premises").

RECITALS

A. Authority is the owner of parking structures and certain facilities located throughout the downtown area of the City ("Parking System"). The Parking System is leased by the Authority to the City, who in turn subleases to DDA; the most current version is entitled Sixth Amendment to Restated Contract of Sublease for the City of Kalamazoo Parking System dated December 15, 2015 ("Sublease"). As authorized under the Sublease the Parking System is operated under an agreement with ABM Industries, commonly known as Central City Parking ("Central City").

B. The Premises is a multi-story parking ramp providing 566 parking spaces within the parking system that is located at 306 North Rose Street, Kalamazoo, Michigan 49007.

C. Buyer has purchased the former Rose Street Market building which is located across the street from the Premises at 303 North Rose Street (now identified as "Arcadia Building").

D. Buyer (to include Buyer's affiliates and associates) has an agreement with a national hotel chain to redevelop the Arcadia Building for a hotel operation. One of the requirements of the hotel under the agreement is for the Buyer to own a nearby parking facility that will adequately meet the needs of the hotel and its guests.

E. Buyer approached the City about acquiring the Premises given its approximate location to the Arcadia Building. Considering the interests held by the Authority, the City and DDA in the Premises, Buyer and Seller negotiated the general terms for the sale of the Premises that is

memorialized in Term Sheet the parties signed effective as of January 6, 2017. This Agreement is intended to more specifically address each party's responsibilities toward closing on the sale and subsequent ownership of the Premises by Buyer.

F. Seller has considered the ramifications of selling the Premises to a private entity and has determined that it is in the best interest of the public to sell the Premises to the Buyer, considering the Premises' current value, the anticipated long-term capital costs for improvements, the retention of 100 parking spaces for public use, and the placement of the Premises back onto the tax rolls.

Therefore, the parties enter into this Agreement as follows:

1. Recitals and Terms.

   A. The recitals accurately reflect the intent and purpose of this Agreement and are made a part of it.

   B. Buyer has or will submit to Seller the Analysis (defined below and the date of such submission is the "Analysis Submission Date" defined below). Further as stated below, within sixty (60) days after the Analysis Submission Date ("Seller's Approval Period"), each Seller shall have reviewed the Analysis and delivered to Buyer their respective and collective approvals of the Analysis and the transaction contemplated by this Agreement which approvals shall be evidenced by resolutions of the City Commission of the City, the commission of the Authority and the Board of Directors of DDA (the "Authorizing Resolutions"). The term "Effective Date" shall mean the date that each Seller has adopted an Approving Resolution.

2. Property Transferred. Seller shall sell to Buyer the Premises and all the equipment and personal property used in the maintenance and operation of the Premises so that it is fully operational by Buyer on the date of closing ("Personal Property"). The Personal Property (identified within 60 days of the Dated Date and attached as Exhibit B) shall be conveyed to Buyer by Bill of Sale and shall include without limitation entry and exit devices, gates and control arms, payment terminals, computers and electronic control devices and lights and lighting, (collectively "Equipment"). If it is necessary to disconnect the Equipment from computers or control devices not located at the Premises to facilitate the Buyer's operation of the ramp with the Equipment ("Control Devices"), then Seller will by date of closing, or such other date as parties agree, make such transition of the Control Devices. (For purposes of this Agreement and where applicable reference to "Premises" shall include the Personal Property, Equipment and Control Devices.)

3. Purchase Price. Buyer shall pay Seller for the Premises a total purchase price of $3,000,000 ("Purchase Price") payable as follows:

A. $1,500,000 in certified funds on date of closing; and

B. $1,500,000 with interest at 3.5% per annum, payable in 60 consecutive monthly installments of $25,000 dollars with a balloon payment of the unpaid principal balance at the expiration of 60 months after closing. This remaining balance of the Purchase Price is set forth in a Promissory Note, secured by a mortgage, both in forms similar to attached Exhibits C and D, respectively.

4. Title Conveyed.

A. The Premises includes:

- Fee simple title to real estate more fully described on attached Exhibit A (the "Real Estate"); and
- Rights under (i) that certain Reciprocal Easement Agreement dated September 21, 1995, recorded September 22, 1995 in Liber 1808, Page 0183 (the "Easement Agreement") which, among its other provisions, grants to the owner of the Real Estate an irrevocable easement over and above the one-story retail area constructed on the DTI parcel (as defined in the Easement Agreement) for the purpose of the construction, maintenance and repair of a parking ramp facility (the "Air Rights Easement") and (ii) appurtenant easements for foundations previously granted to the Real Estate. The term Premises as used herein shall include the Real Estate, the Air Rights Easement Agreement and such appurtenant easements.

B. Seller shall convey title to the Premises at the closing under a warranty deed showing no exceptions except as Buyer allows under Paragraph 5. The deed shall further give Buyer all available divisions under the Land Division Act and shall include an Assignment of Rights in the Air Rights Easement and appurtenant easements.

5. Closing. The closing of the sale shall take place at the offices of the company providing the Title Commitment, or at another location as the parties agree, and within 30 days after expiration of the Due Diligence Period and Buyer's delivery of Notice to Proceed ("Closing Date"). However, either party will have the right to extend the Closing Date for an additional 30 days to complete necessary due diligence, to cure any Defect, or to satisfy any contingency.

Seller shall pay (i) all transfer and/or conveyance taxes, if any, assessed for this transaction, (ii) the premium for the owner's Title Policy (with exceptions) , and (iii) one half (1/2) of Title Company's closing fee for this transaction. Buyer shall pay (i) all recording costs for recordation of the deed and affidavit, (ii) the cost of

any endorsements requested by Buyer, the added premium charged for Title Policy without exceptions or premiums for mortgage policy, (provided that Seller shall provide an Owner's affidavit to the Title Company sufficient for the Title Company to eliminate standard exceptions from the title insurance policy) and (iii) one half (1/2) of Title Company's closing fee for this transaction.

7. Possession. Buyer shall receive possession of the Premises on the Closing Date, subject to the provisions of Paragraph 9.A.

8. Management of Parking Ramp No. 4 Before Closing. While Seller is not under any obligation to make any capital expenses to the Premises, Seller shall, (and Seller shall cause Central City to) continue to operate the Premises in the same manner as conducted before this Agreement was signed, and shall continue to perform routine and necessary day-to-day maintenance and repair of the Premises as required by Section 16 A. (3) hereof.

9. Operation of Parking Ramp No. 4 After Closing.

   A. As further consideration for this Agreement, under a Parking Agreement to be executed at Closing, Buyer will provide up to 100 parking spaces within the Premises for hourly parkers at the parking rates not to exceed those rates charged by the City for hourly parkers in other ramps within the Parking System for a period of eight (8) years after the date of closing. However, Buyer is not obligated to match any subsequent reduction in the hourly parking rates that the City may adopt. The eight-year term is reduced if a new parking ramp is constructed and in operation in the area to the west of the current Kalamazoo County Administration Building - commonly referred to as the Arcadia Commons West – before it expires.

   B. The Parking Agreement shall attach as an Exhibit the agreed upon parking rates then in effect for hourly parkers as charged by the City (the "Approved Parking Rates") or if later changed by the City the uniform Central City hourly rates. Whenever the Approved Parking Rates are increased by the City, then the City shall provide written notice Buyer.

10. Survey. Within fifteen (15) days after the Dated Date, Seller shall provide Buyer with all surveys of the Premises that are currently in any of the Seller's possession. If Buyer determines after receipt of the Due Diligence Information as defined under Section 13 A., that an updated survey of the Premises (including the Real Estate and Air Rights Easement) is required for its evaluation during the Due Diligence Period, Seller agrees to equally share the cost of that survey with Buyer in an amount not to exceed $5000.00, (collectively, "Survey").

11. Property Taxes. As each Seller is a tax exempt entity there are no real or personal property taxes that are due and payable against the Premises or the Personal Property. Buyer shall pay all real and personal property taxes that are

due after the date of the closing. Seller shall pay any assessments levied against the Premises to the date of closing and Buyer will pay when due any assessment that is levied against the Premises after the date of closing.

12. Title Insurance. At Seller's expense and within fifteen (15) days after the Dated Date, Buyer shall obtain and provide to Seller a copy of a commitment ("Title Commitment") to issue an owner's title insurance policy insuring Buyer with respect to the Real Estate the Air Rights Easement and appurtenant easements in the amount of the Purchase Price, with the standard printed exceptions and in the latest form approved by the American Land Title Association ("ALTA"). Seller shall provide any surveys, affidavits and certificates required by the title insurance company if Buyer elects to have the title policy without exceptions or with additional endorsements. Buyer is responsible for paying the added premium charged for a policy without exceptions (if required) and any such additional endorsements.

13. Buyer's Right to Inspect – Due Diligence Period.

A. Buyer and its agents, consultants, and designees ("Buyer's Agents") may from time to time after the Dated Date inspect the Premises and any of the other Premises prior to the closing, and may enter the Premises to perform the inspections referenced in this Agreement. Seller shall provide the items or information listed in Exhibit E within 60 days after the Dated Date ("Due Diligence Information"). Buyer shall have 120 days after receipt of the Due Diligence Information – or the Effective Date, whichever is later ("Due Diligence Period") – to notify Seller that it accepts the Due Diligence Information, that all the contingencies under Paragraph 21 are satisfied or waived and that it desires to close on this transaction and take the Premises in its "AS IS" condition. ("Notice to Proceed").

B. As a part of the Due Diligence Information, Seller shall provide to Buyer, to the extent in Seller's possession, construction drawings, plans, agreements, documents, memoranda, and communications between or relating to the Authority and the owner of the DTI Parcel as defined in the Reciprocal Easement Agreement. Further, Buyer at its option and expense may communicate with the owner of the DTI Parcel and request and obtain from such owner, such estoppel agreements, and other agreements as Buyer shall reasonably request to further document and clarify the Air Rights Easement Agreement and the obligations of the parties under the Reciprocal Easement Agreement and appurtenant easements.

C. As a part of the Due Diligence Information, Seller shall provide to Buyer all contracts and agreements that pertain to the maintenance and operation of the Premises and the parking ramp, but specifically to include contracts and agreements relating to the Personal Property, Equipment

and Control Devices and the operation and maintenance thereof ("**Service Contracts**"). Seller shall be responsible for and shall pay all charges under Service Contracts for the period prior to Closing. Buyer shall only be responsible for those Service Contracts that Buyer has agreed to assume during the Due Diligence Period and Seller shall indemnify Buyer against all other Service Contracts. All Service Contracts except those which Buyer has agreed to assume shall be terminated by Seller, effective as of the Closing Date.

14. Defects. Buyer shall notify Seller within the Due Diligence Period if there are any unacceptable issues ("Defects") regarding title for which a Seller is responsible. Those Defects may include: (i) the Title Commitment discloses an exception not permitted by this Agreement or approved by Buyer; (ii) the Survey shows any deviation from apparent boundaries, an encroachment, or another condition that in Buyer's reasonable judgment, could interfere with Buyer's intended use of the Property or is not approved by Buyer. Seller shall have a reasonable opportunity, not to exceed 30 days, unless, considering the circumstances for such title objection additional time is necessary, to remove or cure such objection at Seller's expense (and in such event the Due Diligence Period and delivery of a Notice to Proceed by Buyer shall be extended for the thirty (30) day period). In addition, Seller shall satisfy the requirements set forth in the Title Commitment by the closing date. If Seller fails or refuses to remove any Defect, then Buyer may: (i) proceed to closing, waiving the Defect at issue; (ii) terminate this Agreement by a written notice to Seller, in which case the Earnest Deposit shall be refunded to Buyer and neither Seller nor Buyer shall have any further liability to the other under this Agreement; or (iii) delay Closing for up to ninety (90) days while the parties endeavor to resolve the Defect through title insurance or otherwise.

15. Environmental Assessment. Within thirty (30) days after the later of receipt of the Environmental Reports listed in Exhibit E and the Effective Date, Buyer may, at its option and expense, order a Phase I environmental report and conduct environmental due diligence with respect thereto. It is anticipated that a Phase II and Baseline Environmental Assessment ("BEA") will be required within the meaning of Part 201 of the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended (Part 201). The Buyer may at its expense order any Phase II BEA or other environmental reports required in connection with Buyer's review and evaluation of the Premises ("Additional Environmental Reports"),. Buyer's satisfaction with the results of all environmental reports will be a contingency for closing. If required in conjunction with the preparation of Additional Environmental Reports, Buyer will have prepared a due care compliance analysis within the meaning of Part 201.

If after receipt of the environmental reports and draft BEA and due care compliance analysis Buyer gives a Notice to Proceed, then Buyer is considered to have waived this contingency for closing.

16. Warranties by Seller. Seller warrants the following to Buyer as of the date of this Agreement and on the date of the closing (to be recertified at Closing):

A. Upon delivery of the Authorizing Resolutions, Seller has full authority to enter into and perform this Agreement in accordance with its conditions, without breaching or defaulting on any obligation or commitment that Seller has to any third parties, provided that by the Closing Date Seller shall amend the Parking Operator Agreements to eliminate any obligations or responsibilities regarding the Premises, including without limitation:

(1) Any lease or other contractual agreement between the City and the Building Authority pertaining to the Premises; any sublease and other agreements between the City and/or Building Authority and the DDA that affect the Premises, including without limitation that certain Sublease for the City of Kalamazoo Parking System dated December 6, 2002, as amended including the Sixth Amendment to Restated Sublease approved by City Commission on December 21, 2015. (It is acknowledged that a Seventh Amendment is necessary to remove Ramp No. 4 from the Sublease);

(2) Any and all agreements pertaining to the operation of the Premises, including that with Central City Parking the current operator of the Premises, except those agreements that Buyer shall expressly accept; and

(3) If capital expenditures are made to the Premises, the same shall be at the expense of the Seller and shall not affect the Purchase Price. However, Seller is not under any obligation to make those expenditures except that Seller shall continue to perform routine and necessary day-to-day maintenance and repair of the Premises and deliver the Premises on the Closing Date in good condition and repair as it exists as of the Effective Date with normal wear and tear excepted.

B. There are no suits, actions, or proceedings pending or, to the best of Seller's knowledge, threatened by any party, including governmental authorities or agencies, against or involving the Premises, or to which Seller is or may become a party in connection with the Premises, or the operation of Premises.

C. Seller has no notice or reasonable knowledge of:

(1) any planned or commenced public improvements that might result in special assessments or otherwise directly and materially affect the Premises;

(2) any government agency or court order requiring repairs, alterations, or corrections of any existing conditions;

(3) any request by an insurer or a mortgagee of the Premises requiring repairs, alterations, or corrections of any existing conditions; or

(4) any actual or threatened obligation of Seller, through written notice from a governmental agency, to undertake or bear the cost of any environmental cleanup, removal, containment, or other remediation of hazardous substances or asbestos at the Premises, or at another location on account of the disposal or release from the Premises of any hazardous substance.

D. Seller will not cause or permit any willful act that would prejudice the business conducted on the Premises and will not assign or grant a security interest or other lien that would encumber the Premises.

E. If any maintenance or repairs are undertaken on the Premises between the Effective Date and Closing Date, Seller shall provide, if applicable, full unconditional waivers of lien from each contractor, subcontractor, supplier, and laborer for all such work.

F. Subject to the above limitations, Seller makes no representations or warranties, written or oral, regarding the conditions of the Premises, including those regarding any environmental contamination or condition or presence of any hazardous substances and Buyer is not relying on any representation or warranty of Seller other than expressly stated in this Agreement.

G. From the Dated Date and continuing through Closing hereunder (or earlier termination should that occur) Seller will cause Central City Parking to continue to operate the parking ramp on the Premises in the same manner operated prior to the Dated Date and will not offer any concessions to parking rates from the City's standard rates without prior approval of Buyer. Seller shall promptly report to Buyer any material occurrence (cost exceeding $2,000) that affects the normal operation of the parking ramp.

H. The income and expense statements and capital expenditure reports provided to Buyer, accurately reflect in all material respects the income and expenses and capital expenses for the Premises for each of the periods described, in accordance with generally accepted accounting

principles, consistently applied. As a part of the Due Diligence Information Seller shall have provided to Buyer all of the written and verbal and any other parking agreements currently in force with respect to those having rights to park in the parking ramp on the Premises ("**Parking Rights Agreements**"). Except as specifically disclosed to Buyer and identified as such, none of the Parking Rights Agreements are effective for any of such parkers after the Closing Date.

17. Warranties by Buyer. Buyer warrants to Seller and shall certify to Seller at the closing as follows:

    A. Buyer is a Michigan limited liability company in good standing.

    B. Buyer has full authority to enter into and perform this Agreement in accordance with its conditions, without breaching or defaulting on any obligation of Buyer to any third parties.

    C. Buyer is able to fully fund or arrange financing to fund the Purchase Price for the Premises.

18. Survival of the Warranties. The warranties of the parties to this Agreement shall survive the closing. The act of closing shall not bar either party from bringing an action based on a warranty of the other party for two (2) years after the closing, after which the warranties shall have no further effect.

19. Commitments by Buyer. In addition to the payment of the Purchase Price for the Premises, Buyer agrees that it will complete or perform the following:

    A. Buyer anticipates redevelopment of one or more of properties, including the Arcadia Building, it or its affiliates own in the vicinity of the Premises as stated in the Recitals. Buyer, at its expense, has retained the W. E. Upjohn Institute to prepare an independent economic impact analysis of such redevelopment ("Analysis" and the date of submission to Seller of the Analysis is the "Analysis Submission Date"). Buyer shall provide the Analysis to the Seller within sixty (60) days after the Dated Date for use and consideration by Seller during the Seller's Approval Period (as defined in Paragraph 1B).

    B. Within 30 days after the Closing Date, Buyer will have completed all agreements with the national hotel chain so that Buyer is able to commence renovation of the Arcadia Building and construction of the building that will connect to the Arcadia Building for the operation of the hotel. Buyer will complete that renovation and construction within 24 months after the Closing Date ("Hotel Project"), subject to causes beyond Buyer's control.

C. As market conditions permit and within reasonable period after completion of the Hotel Project redevelop the other properties Buyer or its affiliates own (as noted above) under separate agreements with the City (to include the City of Kalamazoo Redevelopment Authority if Buyer seeks to include a particular parcel into the City's Brownfield Plan) or DDA.

D. Buyer will not seek any tax increment financing or other tax abatements to assist Buyer in the cost for renovations to the Premises except for the Skywalk referenced below.

20. Commitments by Seller – Seller Approval Period.

A. During Seller's Approval Period, each Seller shall have reviewed the Analysis and delivered to Buyer their respective and collective approvals of the Analysis and the transaction contemplated by this Agreement evidenced by Authorizing Resolutions of each Seller.

B. If Buyer endeavors to construct an overhead walkway connecting the Premises to the Arcadia Building, then the City shall grant to the Buyer appropriate air rights agreements for the connector subject to compliance with local process and guidelines, including specifically Site Plan Review for the Hotel Project. During the Due Diligence Period, Buyer shall identify the proposed location of the overhead walkway, and other specifics as the City may require, so that before expiration of the Due Diligence Period, the City is able to approve the same. Before the Closing Date Buyer and Seller shall agree on the terms and conditions of the air right agreements.

21. Contingencies to Close - Buyer. The obligation of Buyer to close the purchase of the Premises is contingent upon Buyer's satisfaction with the Premises during the Due Diligence Period including the following:

A. The results of its review of the Due Diligence Information as listed in Exhibit E, its physical inspections and any other inspections it or Buyer's Agents have conducted.

B. All representations and warranties of Seller set forth in this Agreement remain true as of the Closing Date.

C. Seller has timely performed its obligations under this Agreement.

If Buyer is satisfied with its review of Due Diligence and all other aspects of the Premises, then before expiration of the Due Diligence Period Buyer may provide to Seller a Notice to Proceed whereupon the parties shall proceed to Closing hereunder.

If Buyer fails to give a Notice to Proceed before expiration of the Due Diligence Period then this Agreement shall terminate, the Earnest Deposit shall be refunded to Buyer and neither Seller nor Buyer will have any further liability to the other under this Agreement.

22. Contingencies to Close - Seller. The obligation of Seller to close the sale of the Premises is contingent upon its reasonable satisfaction during Seller's Approval Period of the following:

A. The transaction proposed in this Agreement and the Analysis were approved by the City Commission of the City, the Commission of the Authority and the Board of Directors of DDA through Authorizing Resolutions.

B. All representations and warranties of Buyer set forth in this Agreement remain true as of the Closing Date.

C. Buyer has timely performed its obligations under this Agreement beyond any notice or cure period provided herein.

If during the Seller Approval Period Seller reasonably determines, in its sole discretion, that either of Conditions 22. B or C has not been satisfied, then Seller shall provide written notice to Buyer specifying such default and Buyer shall have thirty (30) days to cure such default, but if Buyer shall fail to cure such default within the thirty (30) day period, then its sole remedy is to terminate this Agreement by prompt written notice to Buyer. Upon termination, the Earnest Deposit shall be refunded to Buyer and neither Seller nor Buyer will have any further liability to the other under this Agreement.

23. Changes in the Condition of the Premises. If there is a loss or damage to the Premises because of fire or some other casualty between the Effective Date and Closing Date, Seller shall immediately give Buyer notice of the loss or damage. Buyer shall have the right to terminate this Agreement within 10 days after receiving notice from Seller if the damage exceeds $100,000. If Buyer does not terminate this Agreement or the damage is less than $100,000, Buyer and Seller shall determine whether to repair the damage before the closing or to assign any insurance proceeds to Buyer at the closing.

24. Closing Statement; Prorations And Charges.

At Closing Buyer and Seller shall executed a Closing Statement or Statements that shall reflect all prorations, adjustments, credits and payments to include the following:

(i) All funds payable to Seller for parking charges for the parking ramp for the month of Closing shall be prorated to the Closing Date with Buyer receiving credit for parking charges and other payments allocable to the Closing

Date. If there are other prepaid parking charges the same shall also be prorated to the Closing Date.

(ii) As of the Closing Date Buyer shall secure Buyer's own casualty insurance, if necessary, and Seller shall be entitled to any unearned premium of any existing policy, if any.

(iii) Seller shall be responsible for and shall pay all charges and expenses including utility charges incurred in the operation and maintenance of the Property to the Closing Date and if prepaid for a period including the Closing Date, such charges and expenses shall be prorated. Buyer shall be responsible for transferring such utility services as of the Closing Date; provided that Seller shall cooperate with the transfer to the extent reasonably necessary to accomplish the transfer.

(iv) Seller shall be responsible and pay for all amounts for which it is liable for Service Contracts as stated in Paragraph 13C hereof.

25. Indemnification.

A. Buyer will indemnify, defend and hold the Seller - to also include its employees, officers or officials - harmless from any claims (including, without limitation, reasonable attorney's fees and costs) for any injuries to persons or damage to property resulting from the negligent acts or omission of its employees, contractors, agents or representatives while conducting any inspection of or other permitted activities while on to the Premises.

B. To the extent permitted by Michigan law, and without waiving any rights under governmental immunity, Seller will indemnify, defend and hold the Buyer - to also include its employees, officers or officials - harmless from any claims (including, without limitation, reasonable attorney's fees and costs) for any injuries to persons or damage to property resulting from the negligent acts or omission of its employees, contractors, agents or representatives arising from facts and circumstances prior to the date of Closing.

26. Commissions. Each party represents to the other that there are no real estate commissions due or owing as a result of the sale of the Premises under this Agreement.

27. Entire Agreement. This Agreement and the exhibits to this Agreement contain all of the representations and statements by the parties to one another, and express the entire understanding between them regarding this transaction. All prior and contemporaneous communications concerning this transaction, including the January 6, 2017 Term Sheet are merged in and replaced by this Agreement.

Each party acknowledges that it has not made or relied on any representations, inducements, or conditions not specified in this Agreement.

28. Amendments. This Agreement may be amended only by a written document signed by each of the parties to this Agreement.

29. Binding Effect/Third Parties. This Agreement is binding on and will inure to the benefit of the parties to this Agreement and their respective successors. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement.

30. Assignability. Neither party may assign its interest in this Agreement except that Buyer may assign its interest in this Agreement to any entity owned by Buyer or by Buyer's member(s) or principals provided Buyer notifies Seller for approval, not to be unreasonably withheld, not less than 7 days prior to closing.

31. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by Michigan laws. Any actions concerning this Agreement shall be brought in Kalamazoo, Michigan.

32. Waiver. No failure of either party to complain of any act or omission on the part of the other party, regardless how long that failure continued, is considered as a waiver by that party to assert any of its rights under this Agreement. And no waiver by either party, expressed or implied, of any breach of any provision of this Agreement is considered a waiver or a consent to any subsequent breach of this same or other provision.

33. Notices. Any notice or other communication under this Agreement by one party to the other shall be in writing, signed by an authorized representative and delivered in person, electronically (with copy forwarded by first class mail), or by certified mail, postage prepaid with return receipt requested to the following:

Buyer:	306 Parking, LLC ATTN: Jeffrey A. Nicholson 200 West Michigan Avenue, Suite 201 Kalamazoo, MI 49007
With copies to:	David L. Smith Aaron M. Smith McShane & Bowie, P.L.C. 99 Monroe Ave., Ste. 1100 Grand Rapids, MI 49503
City & Authority:	The City of Kalamazoo ATTN: James K. Ritsema, City Manager 241 West South Street

Kalamazoo, MI 49007-4707

With copies to: Office of City Attorney at above address.

DDA: City of Kalamazoo Downtown Development Authority
ATTN: Executive Director
141 East Michigan Avenue, Suite 501,
Kalamazoo, Michigan 49007

With copies to: Michael D. O'Connor, Esq.
151 S. Rose, Suite 900
Kalamazoo, MI 49007

34. Earnest Deposit; Default. Buyer shall within two business days of the Dated Date, deposit $25,000 into an escrow account with the title insurance company issuing the Title Commitment. The earnest deposit will be applied to the purchase price at closing. If this Agreement is rightfully terminated under this Agreement, then the earnest deposit is returned to Buyer. If either party terminates this Agreement without cause, or defaults under this Agreement without curing such default within fifteen (15) days after written notice form the other party, either of which results in not closing the sale and purchase of the Premises and Personal Property, the non-defaulting party may declare this Agreement terminated and/or may pursue any of its legal remedies including without limitation specific performance. If Buyer shall give a Notice to Proceed and shall thereupon default under this Agreement, the earnest deposit is forfeited to Seller in addition to Seller retaining its other legal remedies.

35: Miscellaneous.

A. The representations, warranties, and provisions that require performance subsequent to closing set forth in this Agreement will survive the closing.

B. This Agreement may be signed in counterparts, which together will comprise a single agreement.

C. PlazaCorp Realty Advisors, Inc., as 'parent company' of Buyer will guarantee the outstanding balance of the Purchase Price if Buyer fails to cure as detailed under the Promissory Note any default in the annual payments under Paragraph 3B.

D. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions. Words used throughout this Agreement will have their common meaning.

BUYER

Dated: _____, 2017

306 PARKING, LLC

By: _____

Its: _____

SELLER

Dated: _____, 2017

City of Kalamazoo

By: _____
James K. Ritsema
Its: City Manager

City of Kalamazoo Building Authority

Date: _____, 2017

By: _____
James K. Ritsema
Its: Chair

Date: _____, 2017

City of Kalamazoo Downtown Development Authority

By: _____
Andrew Haan
Its: Executive Director

462787_6

EXHIBIT A

Land situated in the City of Kalamazoo, County of Kalamazoo, State of MI described as follows:

ORIGINAL PLAT, Block 6, Commencing at the Northwest corner of Block 6; thence South 00deg 03min 02sec West 59.7ft to the point of beginning for this parcel; thence East 63.30ft parallel to the North line of Block 6; thence North 00deg 03min 02sec East 59.70ft to the North line of Block 6; thence East 31.20ft along the North line of Block 6; thence South 59.70ft perpendicular to the North line of Block 6; thence East 143.86ft; thence South 00deg 07min 30sec West 205.29ft to the South line of Block 6; thence South 89deg 50min 50sec West 238.15ft along the South line of Block 6 to the Southwest corner of Block 6; thence North 00deg 03min 02sec East 205.92ft along the West line of Block 6 to the point of beginning. Excluding commencing at the Northwest corner of Block 6; thence South 00deg 03min 02sec West 59.7ft to the point of beginning for this exclusion; thence East 57.92ft parallel to the North line of Block 6; thence Southerly 171.05ft; thence Westerly 28.74ft; thence Northerly 16.67ft; thence Westerly 9.33ft; thence Northerly 10.33ft; thence Westerly 19.98ft to the West line of Block 6; thence North 00deg 03min 02sec East 144.05ft along the West line of Block 6 to the point of beginning to this exclusion.

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306 – 310 NORTH ROSE STREET
KALAMAZOO, MICHIGAN

Purchase & Sale Term Sheet Jan. 6, 2017
("**Effective Date**")

1. Buyer:

WM Acquisitions, LLC
On behalf of Entity to be Formed ("**Buyer**")
200 West Michigan, Suite 201
Kalamazoo, MI 49007

2. Sellers:

City of Kalamazoo, a Michigan municipal corporation ("**City**")
Downtown Development Authority of the City of Kalamazoo ("**DDA**")

3. Additional Party:

City of Kalamazoo Building Authority ("**Building Authority**")

4. Property:

Real Estate, building structures and improvements including 566 parking spaces known as Arcadia Parking Ramp No. 4, 306 N. Rose Street, Kalamazoo, Michigan together with all equipment and personal property used in the maintenance and operation of the parking ramp so that the parking ramp is fully operational by Buyer at the time of closing. The equipment and personal property shall be conveyed to Buyer by Bill of Sale and shall include without limitation entry and exit devices; gates and control arms, payment terminals, computers and electronic control devices and lights and lighting, (collectively "**Equipment**"). In the event that to facilitate Buyer's operation of the Ramp with the Equipment it is necessary to disconnect the Equipment from computers or control devices not located at the Ramp ("**Control Devices**") and/or to provide alternate Control Devices at the Ramp or at Buyer's offices, then such disconnection shall be identified during the Due Diligence Period defined below and the parties shall transition such Control Devices as of the closing date or such other date as the parties shall agree. The purchase of the Real Estate, Equipment, Control Devices and all other items of personal property covered by the Bill of Sale are sold "AS IS"provided Seller shall continue to perform routine and necessary day-to-day maintenance and repair of the Property and deliver the Property at Closing in good condition and repair as it exists as of the Effective Date with normal wear and tear excepted..

5. Purchase Price:

$3,000,000

- $1,500,000 at closing;
- $1,500,000 which shall bear interest at 3.5% per annum and be payable in sixty (60) consecutive monthly installments of $25,000, with the unpaid principal balance to be paid as a balloon payment at the expiration of sixty (60) months after Closing. Buyer at its option may prepay the unpaid principal balance in full or in part without premium or penalty.
- Purchase price to be reasonably allocated between real estate and Equipment as proposed by Buyer and reasonably approved by Seller. Seller shall accept any valuation of the Equipment supported by an independent appraisal thereof.

6. Seller Approval Period:

The Seller Approval Period shall mean sixty (60) days from the Analysis Submission Date referenced below. It will be a condition

of the Purchase Agreement that by the expiration of the Seller Approval Period, the City, the DDA and Building Authority shall have delivered to Buyer their respective and collective approvals, including the Analysis, of the transactions contemplated by this Term Sheet ("Seller Approvals"). By delivering the Seller Approvals, the City, the DDA and the Building Authority shall be deemed to have agreed that:

- On the date of Closing under the Purchase Agreement they shall collectively cause any financing documents, mortgage and lease agreements between them with respect to the Property to be amended to eliminate any obligations or responsibilities regarding Ramp #4 including, without limitation the following:
- Any lease or other contractual agreement between the City and the Building Authority pertaining to the Property; any sublease and other agreements between the City and/or Building Authority and the DDA that affect the Property, including without limitation that certain Sublease for the City of Kalamazoo Parking System dated December 6, 2002, as amended including the Sixth Amendment to Restated Sublease approved by City Commission on 12/21/15. (It is acknowledged that a Seventh Amendment is necessary to remove Ramp #4 from the Sublease);
- Any and all agreements pertaining to the operation of the parking ramp including that with ABM Industries the current operator of the parking ramp on the Property, except those agreements that Buyer shall expressly accept; and
- In the event capital expenditures are made to the Property after the date of this Term Sheet, the same shall be at the expense of the Sellers and shall not affect the purchase price stated above. However, Sellers are not under any obligation to make those expenditures, but from the Effective Date through the date of Closing, Sellers shall continue to perform routine and necessary day-to-day maintenance and repair of the Property and deliver the Property in good condition and repair as it exists as of the Effective Date with normal wear and tear excepted.

7. Purchase Agreement

Within ten (10) days after the execution of this Term Sheet by all parties an initial draft of the Purchase Agreement shall be provided by Seller, subject to final form reasonably acceptable to Buyer and the City, the DDA and the Building Authority (collectively "Sellers"). The Purchase Agreement shall be executed by Sellers and Buyer within 30 days after submission by Sellers. If the Purchase Agreement is not signed within this 30-day period, the Purchase Agreement is considered terminated with no further obligations between Buyer and Sellers. The

Purchase Agreement shall include the provisions of Paragraph 6 hereof and provisions found in comparable transaction to include Sellers providing and paying for title insurance policy and transfer taxes and Buyer to pay for environmental reports and Due Diligence including any survey that Buyer shall obtain.

8. Earnest Money:

$25,000. To be deposited in escrow with title insurance company upon execution of Purchase Agreement. The deposit shall be fully refundable until the expiration or waiver of Due Diligence Period.

9. Closing Date:

No later than 30 days after expiration of Due Diligence Period and Buyer's delivery of Notice to Proceed.

10. Economic Analysis:

Buyer anticipates redevelopment of one or more of properties owned by Buyer or its affiliates in the vicinity of the parking ramp. Buyer, at its expense, will provide to Sellers an independent economic impact analysis of such redevelopment ("**Analysis**" and the date of submission to Sellers of the Analysis is the "**Analysis Submission Date**"). The Analysis shall be provided to Sellers for use and consideration by Sellers during the Seller's Approval Period. Buyer will order the Analysis within two (2) business days after execution of the Purchase Agreement and will diligently pursue obtaining the final Analysis. Upon receipt of the final Analysis Buyer will deliver same promptly to Sellers.

11. Due Diligence Period:

One hundred twenty (120) days following the later of (i) the date of Seller Approvals or (ii) receipt by Buyer from Seller of Due Diligence Information listed on attached Exhibit A. On or before expiration of Due Diligence Period, Buyer, at its sole option and discretion may give a Notice to Proceed.

12. Buyer Contingencies:

Buyer to review and approve title, survey, environmental, parking agreements, service contracts, all other information described on Exhibit A, physical inspections and any and all other inspections, reviews and approvals to be acceptable to Buyer in its sole discretion.

13. Existing Monthly Parkers: Also Transient Parkers

Buyer understands that there are hourly parkers in the parking ramp (the "Hourly Parkers"). Buyer agrees that after closing and extending for eight (8) years, it will provide 100 spaces for Hourly Parkers who shall be charged rates not to exceed rates charged by the City for hourly parkers in other City parking ramps (the

current rates are set forth on the attached schedule" **Current Rates**"). Notwithstanding the foregoing if the City shall reduce parking rates below Current Rates, Buyer need not reduce its parking rates. The eight (8) year term is reduced if new ramp built in the area; e.g. what has been suggested for the area west of the current County Administration Building.

14. Additional Agreements-TIF: Buyer will not seek tax increment financing (TIF) for renovations to the existing parking ramp.

15. Walkway Connector: In the event the Buyer should endeavor to construct an overhead walkway connecting the parking ramp to the building at 330 N. Rose Street (the Arcadia Building), then the City shall grant to the Buyer appropriate air rights agreements for the connector subject to compliance with local process and guidelines. During the Due Diligence Period, Buyer shall identify the proposed location of the overhead walkway and other specifics thereof such that before expiration of the Due Diligence Period, the City is able to approve the same.

16. Brokerage: Buyer and Sellers have engaged no real estate brokers in transaction and no brokerage fees are due by either party.

17.Confidentiality Sellers shall at all times keep this transaction and any documents in the transaction confidential, except to the extent necessary to (a) comply with applicable law and regulations, or (b) carry out the obligations set forth in this Agreement. At the request of Buyer, Seller will enter into a mutually agreeable confidentiality agreement regarding the negotiation of this Term Sheet and the Purchase Agreement. It is also understood, however, that each Seller's approval of the Purchase Agreement will occur in compliance with the Open Meetings Act...

18.Effect of Term Sheet: Execution of this Term Sheet by Buyer and Sellers creates no obligation on the part of either Buyer or Sellers it being expressly acknowledged and agreed that neither Buyer nor Sellers shall be obligated to each other except pursuant to a definitive Purchase Agreement executed by Buyer and Sellers.

19. Approval of DDA: The signature of the Executive Director of DDA is subject to the ratification of the Board of Directors within thirty (30) days from the Effective Date.

BUYER:

WM Acquisitions, LLC, a Michigan limited liability company

By: _____

Its: Manager

CITY OF KALAMAZOO, a Michigan municipal corporation

By: _____
James K. Ritsema

Its: City Manager

CITY OF KALAMAZOO BUILDING AUTHORITY,
a public corporation

By: _____
James K. Ritsema

Its: Chair

DOWNTOWN DEVELOPMENT AUTHORITY OF THE
CITY OF KALAMAZOO, a public corporation

By: _____

Its: Derek Wisser, Secretary

EXHIBIT A –
Due Diligence Information

1. Tenant Information
   a. Rent Roll
   b. Parking Agreements
   c. Concessions, Free Rent to Parkers

2. Parking Operator Agreements
   a. Past and Existing Agreements with Operators of the Parking Facility that is a part of the Property

3. Financial Information
   a. Current Year YTD Financial Statements
   b. Current Aged Receivables
   c. Prior Year Financial Statements (2 years)
   d. Capital Expenditures (3 years history, future planned)

4. Physical Condition Information
   a. Plans – Architectural Plans – Current & Historical

   b. Environmental Reports
      1. Phase I ESA, Phase II ESA, Baseline Environmental Assessment (BEA), closure reports and other environmental reports or studies
      2. Geotechnical Reports

   c. Inspection Reports (Most Recent)
      1. Electrical
      2. Mechanical
      3. Roof
      4. Masonry
      5. Structural

5. Title Information
   a. Survey. Seller to provide to Buyer any and all existing surveys in Sellers' possession.

   b. Title Report and Supporting Documents (Most Recent)

6. Other Information
   a. Certificates of Property Insurance

For items not available, please identify and explain. Further items may be requested following review of the above listed items.

453955_9

MARCH 2016 - FEBRUARY 2017
ARCADIA RAMP #4 OCCUPANCY COUNT
566 TOTAL PARKING SPACES

Weekday Daytime	**Occupied**	**Available**	**Usage**
Mar 2016	264	302	47%
Apr 2016	280	286	49%
May 2016	228	338	40%
Jun 2016	191	375	34%
Jul 2016	240	326	42%
Aug 2016	254	312	45%
Sep 2016	274	292	48%
Oct 2016	281	285	50%
Nov 2016	280	286	49%
Dec 2016	311	255	55%
Jan 2017	352	214	62%
Feb 2017	303	263	54%
Annual Average	**272**	**295**	**48%**

Weekday Eve	**Occupied**	**Available**	**Usage**
Mar 2016	72	494	13%
Apr 2016	75	491	13%
May 2016	41	525	7%
Jun 2016	71	495	13%
Jul 2016	32	534	6%
Aug 2016	95	471	17%
Sep 2016	107	459	19%
Oct 2016	131	435	23%
Nov 2016	93	473	16%
Dec 2016	81	485	14%
Jan 2017	81	485	14%
Feb 2017	86	480	15%
	80	**486**	**14%**

Weekend Eve	**Occupied**	**Available**	**Usage**
Mar 2016	59	507	10%
Apr 2016	55	511	10%
May 2016	56	510	10%
Jun 2016	53	513	9%
Jul 2016	44	522	8%
Aug 2016	89	477	16%
Sep 2016	49	517	9%
Oct 2016	53	513	9%
Nov 2016	48	518	8%
Dec 2016	78	488	14%
Jan 2017	63	503	11%
Feb 2017	49	517	9%
	58	**508**	**10%**

Estimating the Impacts of PlazaCorp Investments Related to the Acquisition of the Arcadia Ramp in Downtown Kalamazoo on the Region

Jim Robey, PhD

W.E. Upjohn Institute for Employment Research

March 16, 2017

Introduction

PlazaCorp engaged the W. E. Upjohn for Employment Research to estimate the economic impact of a series of investments in the central business district in downtown Kalamazoo. PlazaCorp is a Kalamazoo-based firm that acquires property for redevelopment and development, "reimagines" sites for adaptive reuse, and engages in property management services.

At the center of PlazaCorp's investment is a branded hotel that will bring another 118 rooms to Kalamazoo's urban core. PlazaCorp began this investment in 2017, with the hotel anticipated to be fully operational by the end of 2018.

The study estimates the economic impact of six projects proposed by PlazaCorp: 1) building the hotel, 2) operating the hotel, 3) acquiring and renovating the Arcadia parking facility, 4) building out the Arcadia North building with 22 residential units (2019), 5) redeveloping 40,000 square feet of currently vacant office and retail space (2020), and 6) adding a second hotel in 2021.

Between 2017 and 2021, PlazaCorp plans to make a total investment of $40 million, which will anchor additional investments by other entities in the northwest quadrant of the city, referred to as Arcadia Commons West.

To estimate the net impact of the six projects, the Upjohn Institute uses the REMI econometric model, which forecasts future economic growth in the region with and without the projects listed. The net impact analysis is based on investment estimates provided by PlazaCorp. The Institute has made no attempt to validate the direct investment estimates.

Summary of Projects

The net impact study estimates separately the indirect and induced effects of the following six projects, as identified by PlazaCorp. The economic impacts are based on investment estimates provided by PlazaCorp. The REMI model uses typical relationships between investment and other economic outcomes, such as additional employment and output, to estimate the impact of the additional investment on employment, gross regional output, personal income, and sales. The region covered by the impact is the Kalamazoo Metropolitan Statistical Area (MSA), which includes Kalamazoo and Van Buren counties. The length of time included for the impact is one year (except for the operations of the hotel) after the completion of each project.

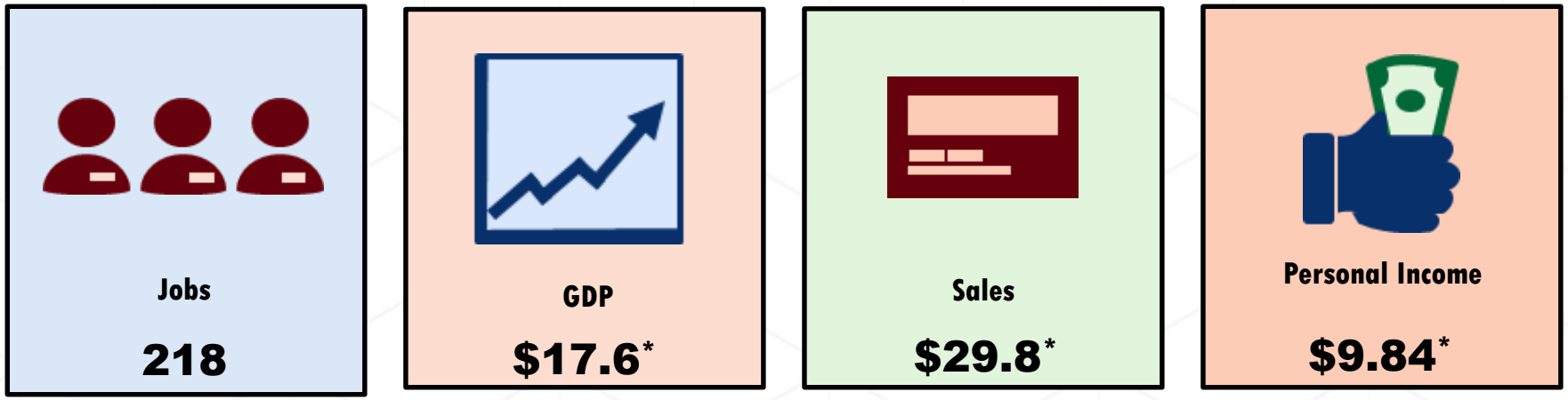
Project	Date Completed	Total Direct Investment
• Hotel "built" investment	2018	$20 million
• Arcadia ramp	2018	$5 million
• Hotel operations	2019	$4.8 million*
• Arcadia North building expansion	2019	$5 million
• Existing office/retail build out	2020	$2 million
• Future hotel expansion	2021	$8 million

*The economic impacts for hotel operations do not include patron spending off-site for food, beverages, retail, entertainment, and transportation.

Details of the Analysis

- PlazaCorp supplied all investment data, including build out and operational costs. The Institute did not attempt to validate the estimates.
- All investments in buildings are assumed to occur in a 12-month period. While there may be overlap across years, the estimates of impacts are provided based on a calendar-year cycle.
- Building investments provide economic impacts only in the year they occur.
- Impacts of operations continue forward while the hotel operates using the sets of inputs specified for the first year of operations.
- The impacts are reported for the Kalamazoo Metropolitan Statistical Area (MSA), which includes Kalamazoo and Van Buren counties. Although the economic activity is located in downtown Kalamazoo, suppliers that are part of this impact analysis may be located within city limits or may be outside the city but in the rest of the MSA.
- The direct investment occurs within the City of Kalamazoo. It is assumed that all of the hotel patrons are from outside the City. Because we feel that downtown hotels are at capacity, we assume that there is no "crowding out."
- There may be additional impacts from the hotel estimates that are not included in this analysis. These could include:
    - Spending by customers on items such as food, retail, and entertainment that occur off premises from the hotel
    - Transportation-related spending on gas, trains, and air transportation

Hotel Investment: $20 million in 2018



The $20 million invested in the hotel is associated with an additional 218 jobs (including workers directly hired to build the hotel) and $9.84 million in personal income in the Kalamazoo MSA the year following construction. The impact estimates are based on $20 million in expenditures including costs of land acquisition, building and tenant construction, soft costs, financing and capital costs, insurance, and government fees and permits.

*Dollars in millions

Hotel Investment: Top 10 Industries by Employment

Industry	Jobs 2018
Construction	126.9
Retail Trade	15.3
Professional, scientific, & technical services	14.7
Furniture and related product manufacturing	8.7
Real Estate	6.6
Administrative & support services	6.0
Food services & drinking places	5.4
Monetary Authorities/Credit	4.7
Ambulatory health care services	4.4
Personal and laundry services	2.0

About 60 percent of the additional jobs associated with the hotel investment are concentrated in the Construction industry. The remainder are distributed across a variety of industries, which for the most part reflect the industrial composition of the region.

Hotel Investment: Top 10 Industries by Sales

Industry	Sales 2018
Construction	$14,224,100
Real estate	$3,125,600
Furniture & related product manufacturing	$2,992,800
Professional, scientific, & technical services	$1,774,000
Retail Trade	$1,298,100
Monetary authorities -bank; credit intermediation and related activities	$1,117,400
Ambulatory health care services	$645,400
Administrative & support services	$457,100
Wholesale trade	$415,300
Food services & drinking places	$273,800

In contrast to employment, only 48 percent of sales are concentrated in the Construction industry. The Real Estate industry rises to the second most-impacted industry and Furniture to the third most-impacted, largely because of the nature of hotel construction, furnishing, and finishes.

Arcadia Ramp: Investment of $5 Million in 2018

Jobs

39

GDP

$4.2*

Sales

$7.2*

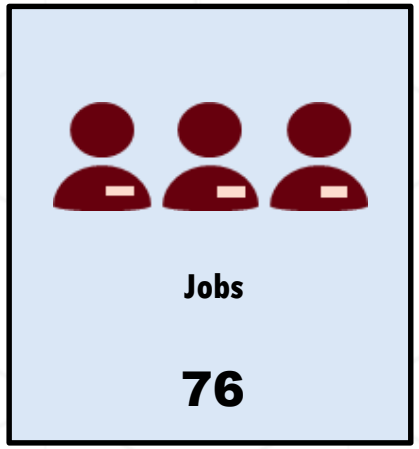
Personal Income

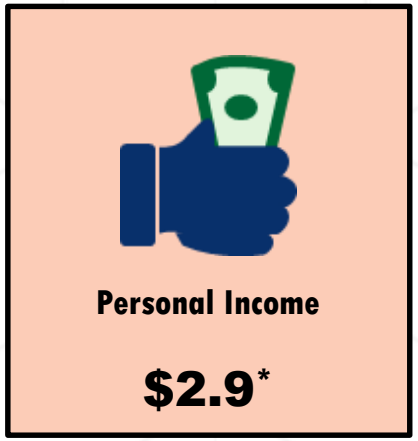
$1.9*

Investment of $5 million in the Arcadia Ramp leads to an additional 39 jobs in the Kalamazoo MSA and $1.9 million in personal income. The Arcadia Ramp expansion impacts are based on $5 million in expenditures including cost of land acquisition, deferred maintenance, access and bridge enhancements, and equipment purchases.

*Dollars in millions

Hotel Operations: $4.8 Million in Revenues in 2019

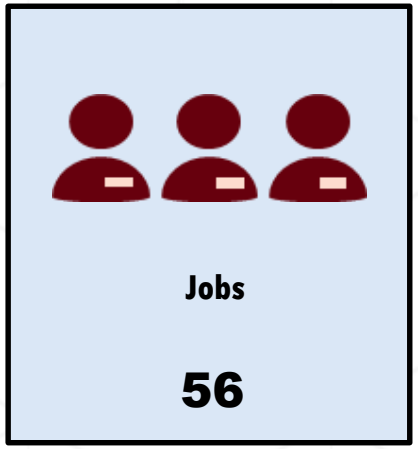


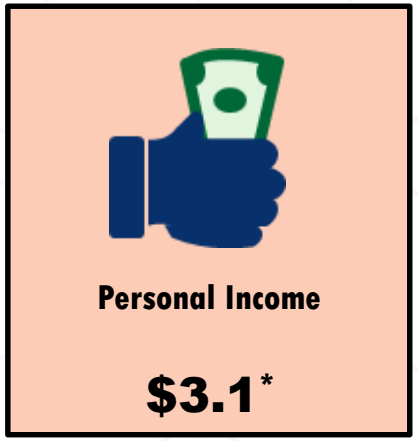


The operation of the hotel, which according to PlazaCorp will generate an estimated $4.8 million in revenues, will lead to 76 additional jobs and $2.9 million in personal income. Unlike construction impacts, which are concentrated in the Construction industry, most of the employment impacts of hotel operations will be concentrated in the Accommodation and Food Services industries. It is important to note that these are annualized estimates and are for one year only. Employment and other returns from the investments continue while the hotel and facilities operate.

*Dollars in millions

Arcadia North: Expansion Project of $5 Million in 2019





The $5 million expansion of residential units leads to 56 additional jobs and $3.1 million dollars in personal income in the Kalamazoo MSA. While this project is primarily residential, impacts are not included in future periods from the effect of residents occupying 22 units. Based on the average occupancy in downtown Kalamazoo of 1.8 persons per unit (American Community Survey), this investment would add another 40 residents in downtown, which could contribute to aggregate growth that drives new investment in providers of goods and services.

*Dollars in millions

Existing Office & Retail: A Project of $2 Million in 2020

Jobs

26

GDP

$2.0*

Sales

$3.2*

Personal Income

$1.5*

The $2 million expansion in office and retail space is estimated to lead to 26 additional jobs and $1.5 million in personal income in the Kalamazoo MSA. This does not include the impacts of office and retail uses in 2021 and forward.

*Dollars in millions

Future Hotel Expansion: A Project of $8 Million in 2021

Jobs

102

GDP

$8.1*

Sales

$13.2*

Personal Income

$6.2*

Future expansion of the hotel is estimated to lead to 102 additional jobs and $6.2 million in personal income in the Kalamazoo MSA. This additional investment is would occur if the hotel completed in 2018 is successful. Based on that hotel's success, the investment in an additional hotel would occur in 2021.

*Dollars in millions

Summary

PlazaCorp has proposed making a series of investments between 2017 and 2021 that will total an estimated $40 million. Part of this investment includes $20 million for a new branded hotel. This hotel will generate ongoing revenues and provide employment opportunities in the City of Kalamazoo into the future.

Gross regional product (GRP) from construction-related projects is $36.3 million, with an additional $4.9 million from the new 2018 hotel operations. Additional sales is $61 million from construction-related projects and an additional $7.9 million from the new 2018 hotel operations.

Personal income, from construction-related projects, is estimated at $22.5 million, with an additional $2.9 million from operations of the new 2018 hotel.

Due to the nature of these investments occurring in different time periods, as well as the fact that jobs only exist in a given time, it isn't logical to combine jobs from the different investments in hotel operations.

The next slide depicts the jobs by project and the other measures of GRP, sales, and income.

Summary

	Time Frame	Input	Output			
Forecast	Year	Amount	Jobs	GDP	Sales	Personal Income
Hotel Investment	2018	$20*	218	$17.6*	$29.8*	$9.84*
Arcadia Ramp	2018	$5*	39	$4.2*	$7.2*	$1.9*
Arcadia North	2018	$5*	56	$4.4*	$7.6*	$3.1*
Hotel Operations	2019	Revenue-based	76	$4.9*	$7.9*	$2.9*
Existing Buildout	2020	$2*	26	$2.0*	$3.2*	$1.5*
Future Hotel	2021	$8*	102	$8.1*	$13.2*	$6.2*

*Dollars in millions

The REMI Model

The study used a model developed by Regional Economic Models, Inc. (REMI) to estimate the economic impacts of PlazaCorp investments on the regional economy (www.remi.com).

An important feature of the REMI model is that it creates estimates using equations that reflect the dynamic nature of the economy (change in relative price) rather than static input/output tables. This allows the analysis to be sensitive to both the timing and scale/scope of the impacts, which is not found in other models.

Embedded in the REMI model is a baseline economic forecast for the region through 2050. To create estimates of PlazaCorp's investment and operational activities, the REMI model is "shocked" and an alternative forecast is estimated. The difference between the baseline and the alternative forecasts provide the estimates of economic impact.

More specifically, the REMI model offers several unique features:

- It is customized to the Kalamazoo MSA.
- It has an exceptionally strong theoretical foundation.
- It combines several different kinds of analytical tools, including economic-base, input-output, and econometric models, allowing it to take advantage of each specific method's strengths and compensate for its weaknesses.
- It allows users to manipulate an unusually large number of input variables and gives forecasts for an unusually large number of output variables.
- It allows users to generate forecasts for any combination of future years, offering special flexibility in analyzing the timing of economic impacts.
- It accounts for business cycles.

Definitions of Economic Outcomes

Here we define the variables used in this study to estimate economic impacts. Most economic impact studies focus on four main variables:

- **Job creation**
- **Change in gross domestic product (GRP)**
- **Changes to income**
- **Output**

Job Creation

- The estimated number of jobs created by PlazaCorp investments.
- These jobs are simply "jobs" as counted by the U.S. Bureau of Economic Analysis (BEA) & are not necessarily full- or part-time positions.
- These jobs are likely distributed across a number of industries.
- In any given industry, a "job" may represent a summation of positions across a number of industries in which each industry has less than one complete position.
  - The impact study may report one "job" but the spending patterns in the study may generate positions in three industries; however, each industry may require only one third of a person.
  - In this case, the three industries that employ one third of a person each to meet demand would sum to one "job" in the REMI model.
- Employment is comprised of three elements:
  - Direct – The employment created buy the actual investment, growth, or change
  - Indirect – Employment created by the need of the new firm to purchase goods & services, essentially the local supply chain

Definitions of Economic Outcomes

- Induced – The households that supply goods and services to the workers in the prior two elements
  - Examples include education, dry cleaners, accountants, gas stations, lawyers, and grocers

Change in Gross Regional Product

- GRP is an economic measure of the additional value that labor contributes to the final product or service.
- GRP does not include the value of "intermediate goods" or inputs into estimating the economic impact.
  - For example, if a $25,000 auto is produced in a region, it may be composed of $15,000 in parts (intermediate goods) and $10,000 in labor to assemble the parts into a complete auto. The $10,000 in GRP is the amount the region uses to measure its input into the auto.
  - If output (or sales) is used, the same $25,000 auto may only generate $500 to the seller. In the initial example, the GRP for the region making the auto would be $10,000, while the GRP from selling the auto in the region would only be $500.
  - The GRP from making the auto is greater and more likely to change the wealth curve of the region. If output is used, both would have the same value and appear (incorrectly) to have similar economic impacts.

Definitions of Economic Outcomes

Changes to Income

- The impact of an event is also measured on the regional pool of income.
- This can be measured as the impact to total income from both residents & commuters generated from the event.
- The income statistic is likely to be overestimated, as it includes wages by place of residence as well as by place of work.

Output

- This measure is essentially the same as sales in the study region.
- It includes both the value of GRP & the value of intermediate goods – the goods or materials needed to make the product or service.
- Output is useful as a measure of economic activity & some of the output is responsible for driving sales taxes at both the state and county levels.

About the Upjohn Institute

The W.E. Upjohn Institute for Employment Research is an activity of the W.E. Upjohn Unemployment Trustee Corporation, which was established in 1932 to address issues of unemployment during the Great Depression. The Upjohn Institute is a private, nonprofit, nonpartisan, independent research organization devoted to investigating the causes and effects of unemployment, to identifying feasible methods of insuring against unemployment, and to devising ways and means of alleviating the distress and hardship caused by unemployment.

Upjohn's broad objectives are to: (1) link scholarship and experimentation with issues of public and private employment and unemployment policy; (2) bring new knowledge to the attention of policy makers and decision makers; and (3) make knowledge and scholarship relevant and useful in their applications to the solutions of employment and unemployment problems.

Upjohn Institute professionals contributing to the authorship of this report are:

- Jim Robey, Ph.D., Director, Regional Economic and Planning Services
- Kathleen Bolter
- Claudette Robey

For additional information or questions, contact Jim Robey at 269-385-0450 or jim.robey@Upjohn.org. Additional information and research on the Upjohn Institute is available at www.Upjohn.org.

Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners

FROM: James K. Ritsema, ICMA-CM, City Manager

PREPARED BY: Sean Fletcher, CPRP, Parks & Recreation Director

DATE: 3/23/2017

SUBJECT: Approve the Allocation of Foundation for Excellence Funding for Parks & Recreation Department Summer Youth Program Initiatives

RECOMMENDATION

It is recommended that the City Commission accept $883,000 of Foundation for Excellence (FFE) funding for the following 2017 FFE aspirational projects:

Supervised Playground Program	$83,000
All Things Possible	$50,000
Summer Youth Employment	$750,000

It is further recommended that the City Commission amend the FY 2017 budget in the following fashion:

- receive $883,000 into the City's new FFE accounting Fund;
- transfer $883,000 from the FFE accounting Fund to the City's General Fund;
- authorize an increase of $883,000 of expenditure appropriations in the FY 2017 General Fund Parks and Recreation Department.

BACKGROUND

The Parks & Recreation Department seeks to engage youth during the summer months in order to provide a positive summer experience. The Supervised Playground Program provides kids ages 5-12 with a safe place to gather with supervision provided by Recreation staff. The site at LaCrone park averaged about 40 kids per day over the summer. Four sites are being planned for 2017, with every effort being made to be in core neighborhoods.

The All Things Possible 2016 summer pilot program enrolled 52 youth and served close to 30 on a regular basis for eight weeks at Interfaith Homes. Staff and parents stated that youth benefited from the program in various ways: gaining social emotional learning skills; learning how to critically think about social justice issues; learning healthy eating habits; and gaining exposure to various community resources.

The Summer Youth Employment Program provides paid employment for youth ages 14-19. Approximately 350-400 youth apply annually for this program with about 110 employed due to the amount of funds available. The program provides work experiences, educational components, and career exploration. Enhancements for 2017 include a focus on financial literacy and entrepreneurship, and a multi-generational career fair.

FISCAL IMPACT

If the City Commission approves the funding allocation from the Foundation for Excellence there will be no fiscal impact to the City.

ALTERNATIVES

There is the alternative to not approve the funding for these youth programs, but that is not being recommended.