



Agenda

Regular Meeting of the City Commission

City of Kalamazoo

Monday, July 3, 2017

7:00 PM

City Commission Chambers - 241 W. South Street

A. CALL TO ORDER/ROLL CALL

B. OPENING CEREMONY

1. Invocation: Sister Jessica Wesel, The Church of Jesus Christ of Latter-day Saints
2. Pledge of Allegiance
3. Introduction of Guests
4. Proclamations

C. ADOPTION OF FORMAL AGENDA

D. COMMUNICATIONS

1. Calendar of Upcoming Meetings

E. PUBLIC HEARINGS

F. CONSENT AGENDA

(Action: Motion to approve Items "1-8" and authorize the City Manager to sign all documents on behalf of the City)

1. Approval of a three-year term contract with Monoform, LLC for manhole rehabilitation by lining in the amount of \$379,209.00.
2. Approval of a ten-year contract with Republic Services of Kalamazoo for residential single stream recycling services in the amount of \$4,596,111.95.
3. Adoption of a RESOLUTION approving the issuance of taxable refunding bonds in an amount not to exceed \$3,900,000 to refund 2008 Capital Improvement Bonds.
4. Approval of agreements with Climax Telephone Company to allow joint use of underground conduit space.
5. Approval of a special permit for a pot bellied pig to be kept at 3008 Morgan Street, subject to compliance with applicable statutes, ordinances and health codes.
6. Approval of the Mayor's reappointment of Greg Taylor to the Downtown Development Authority for a term expiring on March 31, 2021.

7. Approval of the appointment of Aliyah Adams to the Parks and Recreation Advisory Board as a youth representative for a term expiring on March 31, 2020.
8. Approval of the minutes from the City Commission meetings on June 19, 2017.

G. REGULAR AGENDA

H. REPORTS AND LEGISLATION

1. City Manager's Report
 - a. Foundation for Excellence Update

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

Get news, information, and alerts from the City of Kalamazoo. Sign up at www.kalamazoocity.org/connect, follow @KalamazooCity on Twitter, and search for The City of Kalamazoo on Facebook.

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: 6/20/2017

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	20170703 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

July 17th and August 7th

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

July 17th

Advisory Boards, Commissions and Committees (next two weeks)

The **Planning Commission** will meet on Thursday, July 6, 2017 at 7:00 p.m., in the City Commission Chambers at City Hall.

The **Parks and Recreation Advisory Board** will meet on Tuesday, July 11, 2017 at 5:30 p.m., at Kik Pool, located at 1018 Walter Street.

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

The **Traffic Board** will meet on Thursday, July 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, July 13, 2017 at 6:30 p.m., in the Community Room at City Hall.

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

The **Downtown Development Authority** will meet on Monday, July 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: James J. Baker, PE, Public Services Director

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

DATE: 6/6/2017

SUBJECT: Three (3) Year Term Contract – Monoform 955-67-020.0

RECOMMENDATION

It is recommended that the City Commission approve a three (3) year term contract with Monoform, LLC for Manhole Rehabilitation by Lining in the amount of \$379,209.00.

BACKGROUND

The City of Kalamazoo's sanitary sewer system dates back to the 1880's and as the City grew the sewer system was branched out. Of the roughly 300 miles of sewer infrastructure in the ground today, 239 miles were installed prior to 1967 and of that 136 miles were installed prior to 1953. Cast in Place manhole lining is a trenchless technology that provides an additional 50 years of estimated useful life without service interruptions, major construction to the roads, or traffic congestion and detours.

Engineering has identified cast in place manhole lining needs for 2017 and 2018 and has estimated the needs for 2019 based upon results of past inspections. A blanket purchase order over a three year period will allow for the flexibility to address critical sewer structures in need of repair as soon as the problem is identified via inspections and it will bring this trenchless technology forward as an option for emergency repairs.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

Funding and estimated costs are summarized as follows:

Funding – Sanitary Sewer Trenchless Rehab – Bucket (Manhole Assets)

FY2017 Wastewater Capital funding	\$ 125,000
Anticipated FY2018 Wastewater Capital funding	\$ 125,000
Anticipated FY2019 Wastewater Capital funding	<u>\$ 129,209</u>

\$ 379,209

Funds are currently allocated in the 2017 Wastewater CIP budget for this Project. Budgets for 2018 and 2019 will be developed for Commission Approval in 2018 and 2019.

ALTERNATIVES

The alternative of not approving the three (3) year term contract with Monoform, LLC is to rebid each year according to the needs of the system. This will limit the flexibility to respond to problems as they are discovered via inspections and it will eliminate trenchless technology as an emergency response option. This Alternative is not recommended.

ATTACHMENTS:

Type	Description
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	Aerial Photo Bid Results Summary
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BID RESULTS SUMMARY

PROJECT: Manhole Rehab by Lining

DATE: June 14, 2017

BIDDERS SOLICITED: 52

BIDDERS RESPONDED: 2

MBE/WBE BIDS SOLICITED: 8

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 955-67-020.0

MBE/WBE AWARDED: No

ISSUE DATE: May 2, 2017

BID OPENING: May 30, 2017

APPROVAL REQUIRED: City Commission

FUNDED BY: City

<u>BIDDERS</u>	<u>AMOUNT BID</u>	<u>LOCATION</u>
Monoform, LLC	\$ 379,209.00	South Bend, IN
LD Dosca	\$ 449,705.00	Kalamazoo, MI

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 and City Engineer

PREPARED BY: Wendy Burlingham, Administrative Support Manager

DATE: 6/12/2017

SUBJECT: Curbside Recycling Service 910-27-016.0

RECOMMENDATION

It is recommended that the City Commission approve a ten year contract for residential single stream recycling services with Republic Services of Kalamazoo in the amount of \$4,596,111.95.

BACKGROUND

Staff have been evaluating services provided through the solid waste program and found that it would be cost effective to convert to bi-weekly single stream recycling rather than remaining weekly dual stream. In addition to the cost savings, single stream recycling will allow residents to increase the amount of material being diverted from landfills by being provided larger containers for their recyclables. It will be easier to wheel the cart to the curb and more convenient as they will no longer have to sort their materials. It will improve the appearance of the City by containing the items in a cart with a lid and protect the recyclables from the elements to ensure marketable materials.

In May 2017, Purchasing advertised an invitation for bids for subscription bi-weekly single stream recycling. Bids were opened on June 8 2017, with Republic Services being the low responsive bidder. This recommendation will permit conversion to subscription single stream recycling in October 2017. The City will work closely with the cart vendor and contractor to properly promote and educate our residents through the transition and ensure a successful program.

Staff will continue to evaluate solid waste services and frequencies including the recently reduced bulk program to seek out options that meet the needs of our community and ensure State compliance.

COMMUNITY RESOURCES CONSULTED

Public input was sought out in 2015 via survey to all residents of the City of Kalamazoo. Of 391 residents who responded 237 supported the conversion to single stream recycling.

FISCAL IMPACT

Funding for this contract is available in the City's Solid Waste Budget.

ALTERNATIVES

The City could choose to no longer provide solid waste services but the millage and services were voted in place by City residents.

ATTACHMENTS:

	Type	Description
▣	Aerial Photo	Bid Results Summary

BID RESULTS SUMMARY

PROJECT: Curbside Recycling

DATE: June 27, 2017

BIDDERS SOLICITED: 23

BIDDERS RESPONDED: 2

MBE/WBE BIDS SOLICITED: 4

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 910-27-016.0

MBE/WBE AWARDED: No

ISSUE DATE: May 11, 2017

BID OPENING: June 8, 2017

APPROVAL REQUIRED: City Commission

FUNDED BY: Solid Waste Millage

<u>BIDDERS</u>	<u>AMOUNT BID</u>	<u>LOCATION</u>
Republic Services of Western Michigan	\$4,596,111.95	City
Best Way Disposal	\$6,227,043.00	City

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

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

DATE: 6/15/2017

SUBJECT: Resolution Authorizing 2017 Refunding Bonds

RECOMMENDATION

It is recommended that the City Commission adopt a resolution to approve the issuance of taxable refunding bonds in an amount not to exceed \$3,900,000 to refund 2008 Capital Improvement Bonds.

BACKGROUND

The taxable refunding bonds will be used to refund the outstanding 2008 Capital Improvement Bonds.

The City's Financial Advisors, Robert W. Baird and Co., periodically evaluate City debt to identify refinancing opportunities to achieve cash flow savings to the City. Recently, Baird advised the City's Chief Financial Officer that the City would save \$143,189 in cash flow over the next 7 years by issuing refunding bonds to refinance the 2008 Capital Improvement Bonds.

The Resolutions authorize the issuance of Refunding Bonds and authorize City officials to take the necessary actions in connection with the refunding of the outstanding Series 2008 Capital Improvement Bonds, to achieve the aforementioned debt service savings for the City.

FISCAL IMPACT

The 2017 Refunding Bond issue is being recommended to take advantage of low interest rates in today's bond market and achieve interest cost savings for the benefit of the City. The estimated savings from FY 2017-2024 is \$143,189.

ATTACHMENTS:

Type	Description
□	Resolution Authorizing Issuance of 2017 Refunding Bonds

**RESOLUTION AUTHORIZING ISSUANCE OF
2017 REFUNDING BONDS (LIMITED TAX GENERAL OBLIGATION)**

CITY OF KALAMAZOO
County of Kalamazoo, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Kalamazoo, County of Kalamazoo, State of Michigan, held on July 3rd, 2017, at 7:00 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City of Kalamazoo, County of Kalamazoo, Michigan (the "City") has previously issued its 2008 Capital Improvement Bonds (Limited Tax General Obligation), dated July 1, 2008 in the original principal amount of \$4,165,000 (the "2008 Prior Bonds"), which were issued to finance the cost of various capital improvements for the City; and

WHEREAS, the City has previously issued its 2009 Capital Improvement Bonds (Limited Tax General Obligation), dated June 24, 2008 in the original principal amount of \$4,585,000 (the "2009 Prior Bonds" together with the 2008 Prior Bonds, are referred to as the "Prior Bonds"), which were issued to finance the cost of various capital improvements for the City; and

WHEREAS, Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), authorizes the City to refund or advance refund all or any part of its outstanding securities; and

WHEREAS, the City has been advised that it may achieve interest costs savings through the refunding of all or a portion of the callable Prior Bonds (the portion of the Prior Bonds to be refunded are hereinafter referred to as the "Prior Bonds to be Refunded"); and

WHEREAS, the City desires to issue refunding bonds pursuant to Act 34 in the principal amount of not to exceed Three Million Nine Hundred Thousand Dollars (\$3,900,000) (the "Bonds") to refund all or a portion of the Prior Bonds to achieve interest cost savings for the benefit of the taxpayers of the City (the portion of the Prior Bonds to be refunded hereinafter referred to as the "Refunded Bonds"); and

WHEREAS, the City desires to solicit proposals from financial institutions and other

prospective purchasers and negotiate the sale of the Bonds to a purchaser within the parameters established by this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Refunding Bonds; Bond Terms. Bonds of the City designated 2017 REFUNDING BONDS (LIMITED TAX GENERAL OBLIGATION) (the “Bonds”) are authorized to be issued in the aggregate principal sum of not to exceed Three Million Nine Hundred Thousand Dollars (\$3,900,000) for the purpose of paying the costs of refunding the Refunded Bonds, including the costs incidental to the issuance, sale and delivery of the Bonds.

The issue shall consist of bonds fully-registered as to principal and interest of the denomination of \$100,000 or integral multiples of \$5,000 in excess thereof not exceeding for each maturity the maximum principal amount of that maturity, or alternatively, may consist of a single-instrument, non-convertible bond, as determined at the time of sale. The Bonds will be dated as of the date of delivery, or such other date as determined by the City Manager or Director of Management Services and Chief Financial Officer (each, an “Authorized Officer”), be payable on October 1 (or such other date as determined at the time of sale thereof) in the years and in the annual amounts as determined at the time of sale, and may be subject to prior redemption as determined at the time of sale of the Bonds. The Bonds shall bear interest at a rate or rates to be determined upon negotiated sale thereof, payable semi-annually on April 1 and October 1, first payable on such date as determined by an Authorized Officer at the time of sale, provided that the interest rate per annum on the Bonds shall not exceed 5% per annum. The Bonds may be issued as serial or term bonds or both and may be subject to mandatory redemption prior to maturity as determined at the time of sale.

Interest on the Bonds shall be paid by check drawn on the Transfer Agent mailed to the registered owner of the Bonds at the registered address, as shown on the registration books of the City maintained by the Transfer Agent. Interest shall be payable to the registered owner of record as of the fifteenth day of the month prior to the payment date for each interest payment. The date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future. The principal of the Bonds shall be payable at a bank or trust company as registrar and transfer agent for the Bonds (the “Transfer Agent”), provided that in the event that the Bonds are purchased by a single institutional investor the City may act as the Transfer Agent as shall be determined at the time of sale.

2. Execution of Bonds; Book-Entry-Only Form. The Bonds shall be signed by the manual or facsimile signatures of the Mayor and the City Clerk and shall have the facsimile seal of the City printed on the Bonds. No Bond signed by facsimile signature shall be validated until authenticated by an authorized signatory of the Transfer Agent. No Bond signed by facsimile signature shall be valid until authenticated by an authorized signatory of the Transfer Agent. The Bonds may be issued in book-entry-only form through The Depository Trust Company in New York, New York.

3. Transfer of Bonds. The Transfer Agent shall keep the books of registration for this issue on behalf of the City. Any Bond may be transferred upon such registration books by

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the registered owner of record, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Transfer Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer.

4. Limited Tax Pledge; Defeasance of Bonds. The City hereby pledges its limited tax full faith and credit for the prompt payment of the principal and interest on the Bonds. The City shall, each year budget the amount of the debt service coming due in the next fiscal year on the principal of and interest on the Bonds and shall advance as a first budget obligation from its general funds available therefor, or, if necessary levy taxes upon all taxable property in the City subject to applicable constitutional, statutory and charter tax rate limitations, such sums as may be necessary to pay such debt service in said fiscal year. The City Treasurer is authorized and directed to open a separate fund to be known as the 2017 REFUNDING BONDS (LIMITED TAX GENERAL OBLIGATION) DEBT RETIREMENT FUND (the "Debt Retirement Fund"), the moneys to be deposited into the Debt Retirement Fund to be specifically earmarked and used solely for the purpose of paying principal of and interest on the Bonds as they mature. Into said fund there shall be placed the accrued interest, if any, received at the time of delivery of the Bonds.

In the event cash or direct obligations of the United States or obligations the principal of and interest on which are guaranteed by the United States, or a combination thereof, the principal of and interest on which, without reinvestment, come due at times and in amounts sufficient to pay at maturity or irrevocable call for earlier mandatory redemption, the principal of and interest on the Bonds, shall be deposited in trust, this resolution shall be defeased and the owners of the Bonds shall have no further rights under this resolution except to receive payment of the principal of, premium, if any, and interest on the Bonds from the cash or securities deposited in trust and the interest and gains thereon and to transfer and exchange Bonds as provided herein.

5. Bond Proceeds; Bond Issuance Fund; Escrow Fund; Escrow Agreement. The proceeds of the Bonds shall be used to pay the costs of issuance of the Bonds and to secure payment of the Refunded Bonds as provided in this paragraph. Upon receipt of the proceeds of sale of the Bonds the accrued interest, if any, shall be deposited in the Debt Retirement Fund for the Bonds. From the remaining proceeds of the Bonds there shall be set aside a sum sufficient to pay the costs of issuance of the Bonds in a fund designated 2017 REFUNDING BONDS (LIMITED TAX GENERAL OBLIGATION) BOND ISSUANCE FUND (the "Bond Issuance Fund"), which may be established by the City or by the Escrow Agent (hereinafter defined). Moneys in the Bond Issuance Fund shall be used solely to pay expenses of issuance of the Bonds. Any amounts remaining in the Bond Issuance Fund after payment of issuance expenses shall be transferred to the Debt Retirement Fund for the Bonds.

The balance of the proceeds of the Bonds, together with other available funds of the City, if any, shall be deposited in an escrow fund (the "Escrow Fund") consisting of cash and investments in direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or other obligations the principal of

and interest on which are fully secured by the foregoing (the “Escrow Securities”) and used to pay the principal of and interest on all or a portion of the Refunded Bonds as determined by an Authorized Officer at the time of sale. The Escrow Fund shall be held by an escrow agent (the “Escrow Agent”), pursuant to an escrow agreement (the “Escrow Agreement”) which shall irrevocably direct the transfer agent for the Refunded Bonds to take all necessary steps to pay the principal of, interest and redemption premium, if any, on the Refunded Bonds when due, and to call the Refunded Bonds for redemption on the first date such Refunded Bonds may be called for redemption. The Authorized Officers are each individually authorized and directed to appoint an Escrow Agent and execute the Escrow Agreement on behalf of the City. The amounts held in the Escrow Fund shall be such that the cash and investments and income received thereon will be sufficient without reinvestment to pay the principal of and interest on the Refunded Bonds when due at maturity or call for redemption as required by this section. Following establishment of the Escrow Fund, any amounts remaining in the debt retirement funds for the Refunded Bonds shall be transferred to the Debt Retirement Fund for the Bonds. The Authorized Officers are each authorized and directed to purchase or cause to be purchased, Escrow Securities, including United States Treasury Obligations – State and Local Government Series (SLGS), in an amount sufficient to fund the Escrow Fund.

6. Bond Form. The Bonds shall be in substantially the following form with such changes as may be required to conform to the final terms of the Bonds established by the Sale Order:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF KALAMAZOO

CITY OF KALAMAZOO

2017 REFUNDING BOND
(LIMITED TAX GENERAL OBLIGATION)

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
Registered Owner:	October 1, 20____	_____, 2017
Principal Amount:		Dollars

The City of Kalamazoo, County of Kalamazoo, State of Michigan (the "City"), acknowledges itself to owe and for value received hereby promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above, in lawful money of the United States of America, on the Maturity Date specified above, [unless prepaid prior thereto as hereinafter provided,] with interest thereon (computed on the basis of a 360-day year consisting of twelve 30-day months) from the Date of Original Issue specified above or such later date to which interest has been paid, until paid, at the Interest Rate per annum specified above, first payable on April 1, 2017 and semiannually thereafter. Principal of this bond is payable at the corporate trust office of _____, or such other transfer agent as the City may hereafter designate by notice mailed to the registered owner not less than sixty (60) days prior to any interest payment date (the "Transfer Agent"). Interest on this bond is payable to the registered owner of record as of the 15th day of the month preceding the interest payment date as shown on the registration books of the City kept by the Transfer Agent by check or draft mailed by the Transfer Agent to the registered owner of record at the registered address.

This bond, including the interest thereon, is payable as a first budget obligation from the general funds of the City, and the City is required, if necessary, to levy ad valorem taxes on all taxable property in the City for the payment thereof, subject to applicable constitutional, statutory and charter tax rate limitations.

This bond is [a single, fully-registered, non-convertible bond][one of a series of bonds] of even date of original issue [in][aggregating] the principal sum of \$_____, issued pursuant to the provisions of Act 34, Public Acts of Michigan, 2001, as amended and pursuant to a resolution of the City Commission of the City adopted July 3rd, 2017 for the purposes of refunding all or a portion of the City's outstanding 2008 Capital Improvement Bonds (Limited Tax General Obligation) and 2009 Capital Improvement Bonds (Limited Tax General Obligation).

[Bonds of this issue shall not be subject to optional redemption prior to maturity.]

[Insert Term Bond Provisions, if applicable.]

[In case less than the full amount of an outstanding bond is called for redemption, the Transfer Agent, upon presentation of the bond called in part for redemption, shall register, authenticate and deliver to the registered owner of record a new bond in the principal amount of the portion of the original bond not called for redemption.

Notice of redemption shall be given to the registered owner of any bond or portion thereof called for redemption by mailing of such notice not less than thirty (30) days prior to the date fixed for redemption to the registered address of the registered owner of record. A bond or portion thereof so called for redemption shall not bear interest after the date fixed for redemption, whether presented for redemption or not, provided funds are on hand with the Transfer Agent to redeem said bond or portion thereof.]

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This bond is transferable only upon the registration books of the City kept by the Transfer Agent by the registered owner of record in person, or by the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the resolution authorizing this bond and upon the payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this bond and the series of bonds of which this is one, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the City, including this bond and the series of bonds of which this is one, does not exceed any constitutional, statutory or charter debt limitation.

This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.

IN WITNESS WHEREOF, the City, by its City Commission, has caused this bond to be signed in the name of the City by the facsimile signatures of its Mayor and City Clerk and a facsimile of its corporate seal to be printed hereon, all as of the Date of Original Issue.

CITY OF KALAMAZOO
County of Kalamazoo
State of Michigan

By: _____
Its: Mayor

(SEAL)

By: _____
Its: City Clerk

(Form of Transfer Agent's Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned resolution.

Transfer Agent

By: _____

Authorized: _____

DATE OF REGISTRATION:

[Bond printer to insert form of assignment]

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

7. Negotiated Sale. The City Commission has considered the option of selling the Bonds through a competitive sale and a negotiated sale and, pursuant to the requirements of Act 34, determines that a negotiated sale of the Bonds will result in the most efficient and expeditious means of selling the Bonds and will result in the most advantageous interest rates and obtain the lowest issuance costs and interest costs for the City. The Bonds may be sold through a private placement or, in the alternative, as a public offering as determined by an Authorized Officer.

8. Delegation to Authorized Officers; Sale Order. Each Authorized Officer is hereby authorized to solicit proposals from and select a purchaser for the Bonds and to place the Bonds with the purchaser; subject to the parameters set forth in this Resolution. Each Authorized Officer is authorized to award the sale of the Bonds to the purchaser pursuant to a Sale Order, subject to the parameters set forth in this Resolution.

9. Adjustment of Bond Terms. Each Authorized Officer is hereby authorized to adjust the final bond details to the extent necessary or convenient to complete the transaction authorized in this Resolution, and in pursuance of the foregoing are each authorized to exercise the authority and make the determinations authorized pursuant to Section 315(1)(d) of Act 34, including but not limited to, determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, designation of series, and other matters, all subject to the parameters established in this Resolution, *provided* that the principal amount of Bonds issued shall not exceed the principal amount authorized in this Resolution, the interest rate on the Bonds shall not exceed 5% per annum, and the purchase price shall not be less than 98% of the par amount of the Bonds.

10. Tax Covenant. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds.

11. Authorization of Other Actions. In the event of a public offering, the Authorized Officers are each authorized to approve the circulation of a preliminary official statement describing the Bonds and to deem the preliminary official statement "final" for purposes of Rule 15c2-12 of the SEC, and approve the circulation of a final official statement describing the Bonds and to execute the same on behalf of the City. The Authorized Officers are each authorized and directed to (a) solicit bids for and approve the purchase of a municipal bond insurance policy for the Bonds if deemed economically advantageous, (b) apply for applications and any necessary waivers from the Michigan Department of Treasury, and (c) do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Bonds.

12. Bond Counsel. Miller, Canfield, Paddock and Stone, P.L.C. is hereby appointed to serve as bond counsel for the Bonds, notwithstanding the periodic representation in unrelated

matters of parties or potential parties to the transaction contemplated by this resolution, including the purchaser of the Bonds.

13. Placement Agent. Robert W. Baird & Co, Inc. is hereby appointed as the Placement Agent with respect to the Bonds.

14. Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

Scott A. Borling, City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo, County of Kalamazoo, State of Michigan, at a regular meeting held on July 3rd, 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, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Scott A. Borling, City Clerk

29313985.1\046053-00214



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: Jim Hoekstra PE, Traffic Engineer

DATE: 6/7/2017

SUBJECT: Conduit, Innerduct, and Co-Lash Agreements with Climax Telephone Company

RECOMMENDATION

It is recommended that the City Commission approve the City Manager to sign the attached agreements to allow joint use of underground conduit space with Climax Telephone Company.

BACKGROUND

The City has aggressively worked to expand its fiber optic communications infrastructure in the past five years. This network provides communications between traffic signals; water and wastewater facilities; Public Safety facilities; and City operated buildings. It is a coordinated effort between Public Services and Information Technology departments. The intent of this communications infrastructure is to reduce long term annual costs in both asset maintenance and existing contracts with outside providers. This infrastructure utilizes cutting-edge technology to provide the best services to the City at reasonable costs.

In 2016, City staff and Climax Telephone Company (CTS) collaboratively discussed the location and possibility of sharing underground conduit space to improve both entities fiber optic communications infrastructure. The City and CTS maintain and operate several miles of underground conduit that has excess capacity. The desire of both parties was to trade conduit space to allow the other access to run fiber optic communications infrastructure without the need to construct new facilities at substantial cost.

These three agreements allow for the following:

- Allow CTS access to conduit space under the railroad tracks on Miller Road west of Glendening.
- Allow CTS access to conduit space on Portage Road from I-94 to Crosstown Parkway.
- Allow the City of Kalamazoo access to conduit space on Miller Road from Portage Road to River Street
- Allow the City of Kalamazoo access to co-lash to existing CTS cables currently running aerially along Miller Road over the railroad tracks east of Glendening and on Kilgore Road over the railroad tracks near 2605 Kilgore Avenue.

Since 2016, City staff has coordinated the logistics of the agreements with CTS, worked with attorneys from both the City and CTS, and compiled the agreements attached that can expand our infrastructure at minimal cost

for substantial gain.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

As part of the agreement, the City will pay a one-time fee of \$14,753.00 for some additional structures and manholes which are needed. Funds are available in the IT CIP to cover the project costs.

ALTERNATIVES

The City could choose to not perform the work as proposed, however that is not recommended.

ATTACHMENTS:

Type	Description
▣	Agreement Innerduct Exchange Agreement
▣	Agreement Conduit Agreement and Grand of IRU
▣	Agreement Co-Lash Agreement

INNERDUCT EXCHANGE AGREEMENT

This Innerduct Exchange Agreement (the “Agreement”) is entered into as of _____, 2017 (the “Effective Date”) between Climax Telephone Company d/b/a CTS Telecommunications, Inc. (“CTS”), a Michigan corporation and the City of Kalamazoo, (“City”) a Michigan municipality. CTS and City are sometimes referred to individually as a “Party” and collectively as the “Parties.” A Party that is providing Innerduct to the other is sometimes referred to as “Provider” and the recipient is sometimes referred to as “Customer”.

RECITALS

1. CTS owns and operates an Innerduct and Conduit system in Kalamazoo Michigan (the “CTS System”).
2. City owns and operates an Innerduct and Conduit system in Kalamazoo Michigan (the “City System”).
3. CTS wishes to expand the geographic reach of the CTS System by obtaining the right to use certain ducts in the City System.
4. City wishes to expand the geographic reach of the City System by obtaining the right to use certain ducts in the CTS System.
5. CTS and City wish to accomplish the foregoing expansions by means of a like kind exchange of network assets in compliance with Section 1031 of the United States Internal Revenue Code (“Section 1031”).

AGREEMENT

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings ascribed to them below or in the text of the Agreement or its Exhibits.

“Affiliate” means any Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another Person. For purposes of this definition, the term “own” means to own an equity interest (or equivalent thereof) of more than ten percent (10%).

“Closing” means a settlement under this Agreement during which each Party, as a Provider, executes and deliver to the other Party an Innerduct Agreement and Grant of IRU, in the form attached as Attachment 1 (“Grant of IRU”), for the Innerduct Miles in which an IRU is being conveyed by each Party.

“Conduit” means buried plastic duct work into which an innerduct or series of innerducts are placed.

“Joint Pathway” means cables that jointly share and occupy the same innerduct.

“Customer Innerduct” or “Customer IRU Innerduct” means those Innerducts that have been selected to be the subject of an IRU exchange under this Agreement.

“Innerduct” means a buried plastic duct into which fiber optic communications cable is placed, which Innerduct is part of either the CTS System or the City System and is held by ownership or IRU interest.

“Innerduct Mile” means a one mile length of a plastic buried Innerduct.

“Force Majeure Event” means any event or circumstance beyond the reasonable control of the impacted Party, including, but not limited to, earthquake, hurricane, fire, flood, sinkhole or other forces of nature, acts of war, terrorism or civil unrest, strikes, lockouts or other labor unrest, or legal order, government action or application of laws, regulations or codes.

“Indefeasible Right of Use” or “IRU” means an exclusive right to use a designated Innerduct, along with certain other non-exclusive ancillary rights, as further described and upon the terms and conditions specified in the Grant of IRU form attached as Attachment 1.

“Person” shall mean any individual, partnership, corporation, company, limited liability company, association, municipality, or any other legal entity authorized to transact business in any state in the United States.

“Proprietary Information” means any confidential, privileged or non-public proprietary information marked or identified as “Confidential” pursuant to Section 9.1.

2. SCOPE OF AGREEMENT

2.1 Agreement to Exchange. City agrees to grant to CTS an IRU for certain Innerduct Miles or equivalent on the City System upon and subject to the terms and conditions specified below. CTS agrees to grant to City an IRU for certain Innerduct Miles or equivalent on the CTS System upon and subject to the terms and conditions specified below. City’s IRU Grant to CTS and CTS’s IRU Grant to City shall be for the same number of Innerduct Miles or reasonable equivalent Innerduct Miles. The grants are considered by the Parties as one or more like kind exchanges of assets in compliance with Section 1031. Neither Party represents or warrants to the other that such tax treatment will be accepted or otherwise allowed by any taxing authority, including the U.S. Internal Revenue Service and each accepts the risk of disallowance. Each Party waives any claims against the other Party arising out of such disallowance, except to the extent that such disallowance is caused by the other Party’s intentional misconduct or Default under this Agreement. The Parties may continue to exchange like kind Innerduct according to these terms and conditions by executing subsequent Grants of IRU or by adding additional Exhibits by amendment to existing Grants of IRU under the authority of this Agreement.

2.2 Closings. The exchange of Innerduct Miles specified in the preceding section shall be effected in one or more Closings conducted by the Parties at mutually acceptable times following the Effective Date. At each Closing the Parties shall exchange Grants of IRU (Attachment 1) in the same or reasonably equivalent numbers of Innerduct Miles. Each Grant of IRU is considered as part of this Agreement.

2.3 The Parties agree that they will cooperate with each other in good faith to provide relevant network information, conduct testing and acceptance procedures, and consummate Closings so that each Party may receive IRUs in the same Innerduct Miles or equivalent during the one year period following the Effective Date.

3. NETWORK INFORMATION, INSPECTION, ACCEPTANCE AND EXCHANGE

3.1 Network Information. The Parties agree from time to time, upon request, to provide Innerduct maps and general information regarding their Innerduct system and meet to discuss the possibility of additional commercial arrangements. These discussions may include on-net buildings, expansion plans, and service offerings where appropriate.

3.2 Inspection and Acceptance. Upon delivery of a Segment (as defined in Attachment 1), Provider shall provide Customer the opportunity to perform, subject to the protocols of the Rights-of-Way agreements, a physical inspection of the Segment. If Customer determines that the inspection correctly specifies the length and condition of the Customer IRU Innerduct, Customer shall give written notice of acceptance ("Acceptance") to Provider and the date of such notice shall be the Acceptance date for the Customer Innerduct. If Customer delivers to Provider, within ten (10) days after receipt of the Delivery Notice, written notice specifying a dispute as to the length or non-conformance of the Customer Innerduct, Provider shall promptly undertake appropriate corrective action, and the approval process shall be repeated. If Customer fails to deliver any written notice within ten (10) days after receipt of the Delivery Notice, Customer shall be deemed to have accepted ("Accepted" or "Acceptance") the Customer Innerduct and said tenth (10) day shall be the Acceptance date for the Customer Innerduct.

3.3 Closing. When the Parties have each identified the Innerduct Miles for exchange, the Parties shall conduct a Closing, at which they shall exchange Grants of IRUs describing those Customer Innerducts. Each Party shall execute and deliver to the other Party a Grant of IRU, materially similar to Attachment 1, including maintenance obligations for a term of twenty (20) years. Regardless, if the Provider holds its rights in the subject Innerducts for a shorter period of time, then the Grant of IRU shall be only for such shorter period of time. Information regarding Innerducts for which such a shorter Grant of IRU will be necessary shall be among the information provided by each Party pursuant to Section 3.1.

4. ASSIGNMENT

Except as provided in this Article, Customer shall not assign this Innerduct Agreement to any other party without the prior written consent of Provider, provided, however, that without such consent, Customer shall have the right to assign, sublet or otherwise transfer this Innerduct Agreement, in whole or in part, to any parent, subsidiary or affiliate of Customer or to any person, firm or corporation which shall control, be under the control of or be under common control with Customer, or any corporation or entity into which Customer or a subsidiary of Customer may be merged or consolidated or which purchases all or substantially all of the assets of Customer or a subsidiary of Customer.

Except as provided in this Article, Provider shall not assign this Innerduct Agreement to any other party without the prior written consent of Customer, provided, however, that without such consent, Provider shall have the right to assign, sublet or otherwise transfer this Innerduct Agreement, in whole or in part, to any parent, subsidiary or affiliate of Provider or to any person, firm or corporation which shall control, be under the control of or be under common control with Provider, or any corporation or entity into which Provider, or a subsidiary of Provider, may be merged or consolidated or which purchases all or substantially all of the assets of Provider, or a subsidiary of Provider.

Subject to the provisions of this Article each of the parties' respective rights and obligations hereunder, shall be binding upon and shall inure to the benefit of the parties Provider and each of their respective permitted successors and assigns.

5. NOTICES

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, facsimile transmission (to be followed promptly by written confirmation mailed by commercial delivery service or certified mail as provided below), by e-mail (to be followed promptly by return e-mail confirming receipt) or sent by commercial delivery service or certified mail, return receipt requested, (c) deemed to have been given on the date of personal delivery, the date of transmission and receipt of facsimile transmissions, the date of transmission and receipt of e-mail transmission, or the delivery date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows:

If to CTS: Climax Telephone Company
13800 E Michigan
Galesburg, MI 49053
Facsimile: (269) 746-9914

E-Mail: _____

If to City: City of Kalamazoo
c/o City Manager
241 West South Street

Kalamazoo, MI 49007
(269) 337-8209

With copies to: Office of City Attorney
241 West South Street
Kalamazoo, MI 49007
(269) 337-8185

Facsimile: _____

E-Mail: _____

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section.

6. DEFAULT AND REMEDIES

6.1 Default. A Party shall be in Default under this Agreement if the Party fails to perform, in any material respect, any of its obligations set forth in this Agreement, and such failure is not excused by any provision of this Agreement and continues unremedied for a period of thirty (30) days following written notice from the non-breaching Party. However, if the breach by its nature cannot be cured within thirty (30) days and the breaching Party within that time has commenced to cure, no Default shall be deemed to have occurred, so long as the Party diligently continues such cure to completion. In such a case, the time for curing the default to completion shall be extended for a period of up to ninety (90) days following written notice from the non-breaching Party.

6.2 Remedies. Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this Agreement, to pursue all legal or equitable remedies it may have against the Defaulting Party including, without limitation, the right to seek injunctive relief to prevent the Defaulting Party from continuing to Default its obligations under this Agreement and the right to declare a termination of this Agreement.

6.3 An event of default shall be deemed to have occurred if a Party becomes insolvent or institutes or has instituted against it bankruptcy proceedings which are not dismissed within ninety (90) days of filing, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency. Under such circumstances, non-defaulting Party may immediately terminate this Agreement.

6.4 Limitation of Liability. IN NO EVENT SHALL PROVIDER OR CUSTOMER BE LIABLE TO THE OTHER OR TO THE OTHER'S CUSTOMERS, WHETHER IN CONTRACT, TORT, BY INDEMNITY OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS.

7. MUTUAL INDEMNIFICATION

7.1 Indemnification by Provider. Provider agrees to indemnify, defend, and hold harmless Customer and its Affiliates, including their officials, employees, officers and directors, from claims by or liabilities to any third party for: (i) any injury to or death of any person, or any damage to or loss of tangible property or facilities, resulting from the negligent acts or willful misconduct of Provider and its Affiliates and their officials, officers, directors, employees, agents, contractors, licensees, invitees and vendors (collectively, a “Provider Indemnifying Party”) in connection with the performance of any obligations of Provider under this Agreement; or (ii) any claims, liabilities or damages arising out of any violation of any regulation, rule, statute or court order by a Provider Indemnifying Party in connection with the performance of any obligations or exercise of any rights of Provider under this Agreement. The foregoing indemnity to defend shall include the obligation to pay or reimburse for reasonable attorney fees and court costs. The foregoing indemnity shall not be interpreted to apply to any failure of Customer to achieve a particular tax treatment or result for its participation in this Agreement, including but not limited to the intended like kind exchange treatment.

7.2 Indemnification by Customer. Customer agrees to indemnify, defend, and hold harmless Provider, and its Affiliates, including their officials, employees, officers and directors, from claims by or liabilities to any third party for: (i) any injury to or death of any person, or any damage to or loss of tangible property or facilities, resulting from the negligent acts or willful misconduct of Customer and its Affiliates and their officials, officers, directors, employees, agents, contractors, licensees, invitees and vendors (collectively, a “Customer Indemnifying Party”) in connection with the performance of any obligations of Customer or exercise of any of the rights of Customer under this Agreement; or (ii) any claims, liabilities or damages arising out of any violation of any regulation, rule, statute or court order by a Customer Indemnifying Party in connection with the performance of any obligations or exercise of any rights of Customer under this Agreement. The foregoing indemnity to defend shall include the obligation to pay or reimburse for reasonable attorney fees and court costs. The foregoing indemnity shall not be interpreted to apply to any failure of Provider to achieve a particular tax treatment or result for its participation in this Agreement, including but not limited to the intended like kind exchange treatment.

7.3 Notice of Claims/Defense and Compromise. The indemnified Party agrees to provide the other with notice of any claim which may result in an indemnification obligation hereunder promptly after learning of such claim. The indemnifying Party (whether Provider Indemnifying Party or Customer Indemnifying Party, as applicable) may defend such claim with counsel of its own choosing, provided that no settlement or compromise of any such claim will occur without the consent of the indemnified Party, which consent shall not be unreasonably withheld.

7.4 Governmental Immunity. Regardless of the above provisions under this Section 7, the City retains all its rights under governmental immunity regarding any claims or liabilities asserted by third parties.

8. FORCE MAJEURE

8.1 Force Majeure Events. Regardless of any other provision of this Agreement, neither Customer nor Provider shall be liable for any default and/or failure or delay in performing its obligations, or for any loss or damage, resulting from a Force Majeure Event, including, but not limited to any failure or delay in performance caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions (collectively "Regulations") (but not to the extent the delay caused by such Regulations could be avoided by rerouting the Innerduct System if such a reroute was commercially reasonable); condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either Party .

8.2 Response to Force Majeure. A Party whose performance is impacted by a Force Majeure Event shall provide reasonable notice to the other Party of the cause and of the estimated duration, when possible, and shall make commercially reasonable efforts to minimize the impact of the Force Majeure Event on its performance.

8.3 Suspension Pending Force Majeure. The deadline for a Party's performance of an obligation under this Agreement, other than payment of money, shall be postponed by the period of time by which the Party's ability to perform that obligation is materially prevented or interfered with by a Force Majeure Event.

9. MISCELLANEOUS

9.1 Proprietary and Confidential Information.

A. Obligation to Maintain as Confidential. Each Party acknowledges that in the course of the performance of this Agreement it may have access to Proprietary and/or Confidential Information of the other Party. All Proprietary and Confidential Information in tangible form of expression which has been delivered (or thereafter created by copy or reproduction pursuant to this Agreement) shall be and remain the sole property of the Party which is disclosing such Proprietary and Confidential Information (the "Disclosing Party").

B. Obligations Concerning Proprietary Information

1. General Restrictions. The Party receiving the Proprietary and Confidential Information (the "Receiving Party") shall keep the Proprietary Information in confidence with at least the same degree of care that it affords its own confidential information, and shall not disclose to any person (with the exception of employees, officers, directors, representatives, and Affiliates of the Receiving Party, and their accountants, attorneys, lenders and other advisors, to the extent each such person or entity has a need to know) any of the Disclosing Party's Proprietary and Confidential Information except as otherwise permitted by the terms and conditions of this Agreement. There is no restriction, either express or implied, on any disclosure or

dissemination of the structure or tax aspects of this Agreement. Furthermore, each Party acknowledges that it has no proprietary rights to any tax matters or tax idea or to any element of the Agreement's tax structure.

2. Additional Marking Requirements. If either Party discloses its Proprietary and Confidential Information to the other Party unmarked or in oral or visual form, the Disclosing Party shall notify the Receiving Party in writing that this Information is deemed Proprietary and/or Confidential Information within forty-eight (48) hours of its disclosure. Any Proprietary and Confidential Information disclosed in this manner shall receive the same treatment under subparagraph 1 above from the date such written notice is received.
3. Exceptions. The Receiving Party shall not be precluded from, nor liable for, disclosure or use of any Proprietary or Confidential Information if:
 - (a) the Proprietary/Confidential Information is in or enters the public domain, other than by a breach of this Agreement;
 - (b) the Proprietary/Confidential Information is known to the Receiving Party at the time of first receipt, or thereafter becomes known to the Receiving Party prior to or subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records;
 - (c) the Proprietary/Confidential Information is developed by the Receiving Party independently of any disclosure under this Agreement as evidenced by written records;
 - (d) the Proprietary/Confidential Information is disclosed more than five (5) years after the date of first receipt of the disclosed Proprietary Information;
 - (e) disclosure of the Proprietary/Confidential Information is required under Michigan's Freedom of Information Act, or compelled by a government authority, including without limitation, any court or regulatory body, whether or not a protective order is sought or granted;
 - (f) the Disclosing Party consents, in writing, to the disclosure or use of the Proprietary/Confidential Information; or
 - (g) the Receiving Party has a reasonable belief that disclosure of the Proprietary/Confidential Information is necessary for public safety reasons and has attempted to provide as much advance notice of the disclosure as is practicable.

4. Disclosures. The disclosure of Proprietary/Confidential Information shall not be construed as granting any right of ownership in that disclosed Proprietary/Confidential Information.

9.2 Publicity and Advertising

- A. Limitations. Under this Agreement, neither Party shall publish or use any advertising, sales promotions, or other publicity materials that use the other Party's (or its Affiliate's) logo, trademarks, or service marks or name without the prior written approval of the other Party, which approval may be withheld in the discretion of that Party. Except as provided in paragraph B below, each Party shall have the right to review and approve, which approval shall not be unreasonably withheld or delayed, any publicity materials, press releases or other public statements by the other Party under this Agreement or its contemplated transactions.
- B. Exceptions. This Section shall not apply to reasonably necessary disclosures in or in connection with court or regulatory filings or proceedings, financial disclosures that in the good faith judgment of the disclosing Party are required by law or regulatory authority, or disclosures that may be reasonably necessary in connection with the performance of this Agreement.

- 9.3 Independent Contractor/No Joint Venture. The performance by Customer and/or Provider of all duties and obligations under this Agreement shall be as independent contractors and not as agents of the other party, and no persons employed or utilized by a performing Party shall be considered the employees or agents of the other. Neither Party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between Customer and Provider, and no Party shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

- 9.4. No Waivers. No failure or delay on the part of either Party in exercising any right, power or privilege and no course of dealing between the Parties shall operate as a waiver of any terms or conditions of this Agreement. No single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

- 9.5 Additional Actions and Documents. Each of the Parties agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its best efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the

purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

9.6 Construction

- A. The descriptive headings of the several articles and sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.
- B. This Agreement has been negotiated by the Parties at arms-length and each Party has been represented by their respective legal counsel, and legal or equitable principles that might require the construction of this Agreement or any provision of this Agreement against the Party drafting this Agreement shall not apply in any construction or interpretation of this Agreement.
- C. Words used herein, regardless of the gender and number specifically used, shall be deemed and construed to include any other gender, masculine, feminine or neuter, and any other number, singular or plural, as the context requires.

9.7 Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein.

9.8 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument; all counterparts shall constitute one and the same document. A facsimile or e-mail transmission of a signature shall be deemed to be an original signature. The Party providing a signature by facsimile shall upon request deliver an original counterpart of the same to the other Party.

9.9 Applicable Law and Venue. This Agreement is governed under the laws of the State of Michigan with venue for any action filed in court with Kalamazoo County.

9.10 Entire Agreement; Amendments. This Agreement, Attachment 1 and any other attached exhibits hereto constitute the entire agreement between the Parties, and supersede all previous understandings, commitments or representations, whether oral or written, concerning the subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained in the Agreement, Attachment 1, and any other attached exhibits hereto. This Agreement may not be amended or modified in any way except by a writing signed by an authorized officer of the Party against whom the amendment is sought to be enforced.

- 9.11 Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall remain in force to the greatest extent permitted by law.
- 9.12 Survival. The rights and obligations of the Parties under this Agreement that would by their nature survive the expiration or termination of this Agreement, including without limitation, those pertaining to further assurances, indemnities and limitations of liability, shall survive the expiration or termination of this Agreement.
- 9.13 Time. If the last day permitted for the giving of any notice or the performance of any act required or permitted under this Agreement falls on a day that is not a business day, the time for the giving of such notice or the performance of such act will be extended to the next succeeding business day.
- 9.14 Waiver of Jury Trial. Each Party voluntarily and irrevocably waives trial by jury in any action or other proceeding brought in connection with this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

City of Kalamazoo

Climax Telephone Company

By: _____

By: _____

Name: James K. Ritsema

Name: _____

Title: City Manager

Title: _____

ATTACHMENT 1 TO INNERDUCT EXCHANGE AGREEMENT

BETWEEN CLIMAX TELEPHONE COMPANY AND THE CITY OF KALAMAZOO

INNERDUCT AGREEMENT AND GRANT OF IRU

THIS INNERDUCT AGREEMENT AND GRANT OF IRU ("Innerduct Agreement") is entered into, and effective as of _____, 2017, between Climax Telephone Company d/b/a CTS Telecommunications, Inc. ("CTS"), a Michigan corporation and The City of Kalamazoo, ("City") a Michigan municipality.

BACKGROUND

- A. This Agreement is made a part of that certain Innerduct Exchange Agreement executed by both Parties and effective as of _____, 2017. Any definitions and other relevant references and provisions contained in the Innerduct Exchange Agreement shall apply to this Innerduct Agreement as though fully defined and so referenced (and fully applicable) herein.
- B. As identified in the Innerduct Exchange Agreement, CTS and City are each utilizing its own Innerduct Systems in and around Kalamazoo Michigan.
- C. CTS, as Provider, desires to grant to City, as Customer, an Indefeasible Right of Use ("IRU") of Innerduct in the Provider's Innerduct System upon all the terms and conditions set forth below. Further, City, as Provider, desires to grant to CTS, as Customer, an IRU of Innerduct in the Provider's Innerduct System upon all of the terms and conditions set forth below. The Innerduct granted to Customer is sometimes referred to herein as "Customer IRU Innerduct."

DEFINITIONS

The following terms are used in this Innerduct Agreement:

- A. "Acceptance Notice" means the notice of acceptance or deemed acceptance of a Segment and/or entire route given by Customer pursuant to Article V after 's Customer's Innerduct has been inspected and found acceptable to Customer.
- B. "Effective Date" is the date the IRU commences after the Innerduct is inspected and Customer accepts its Innerduct within a Segment.
- C. "Innerduct" means a buried plastic duct into which fiber optic communications cable is places, which Innerduct is part of either the CTS System or the City System and is held by ownership or IRU interest..

- D. "Indefeasible Right of Use" or "IRU" is an exclusive and irrevocable right, subject to the term in Article II, to use the Customer IRU Innerduct. Customer shall be deemed to be the beneficial owner of the relevant IRU Innerduct and shall, without further action on its part, have exclusive use of the IRU Innerduct and all other incidents of ownership, except legal title as and from the date of sale and purchase of the property right. The grant of IRU does not convey legal title to the Innerduct or real or personal property.
- E. "IRU Innerduct" means the Innerduct obtained by Customer in Provider's Innerduct System.
- F. "Rights-of-Way" see Article XV for definition.
- G. "Segments" are portions of Innerduct routes specified in Exhibit A of this Innerduct Agreement which are capable of being inspected and accepted.
- H. "Provider Innerduct" means the Innerduct System containing Innerduct in which Customer has an IRU pursuant to the terms of this Innerduct Agreement.

In consideration of their mutual promises the parties expressly agree as follows:

ARTICLE I GRANT OF IRU

Customer desires to obtain an IRU for Innerduct in the Provider Innerduct System specifically described in Exhibit A to this Innerduct Agreement. From time to time additional routes may be added by amending Exhibit A to this Innerduct Agreement. For each IRU granted, a separate Exhibit A, executed by both parties, will be attached to the Innerduct Agreement, titled so as to identify the Innerduct route and resulting IRU. Upon Acceptance of a Segment by Customer, Provider grants an IRU to Customer for the IRU Innerduct specified in the applicable Exhibit A. Upon Acceptance, Provider also grants a non-exclusive right to use tangible and intangible property Customer needs to use its IRU Innerduct, including but not limited to troughing, pedestals, slack containers, and related equipment. Customer shall be entitled to use its IRU Innerduct for any lawful purposes subject to (i) agreeing to be bound by all laws, regulations and any requirements of Rights-of-Way Innerduct Agreements relating to access; (ii) agreeing to appoint Provider as its agent for matters relating to access to the Rights-of-Way; and (iii) agreeing to notify Provider of any transfer and obtaining from any transferee undertakings to be bound by the above as per the terms and conditions of the Rights-of-Way Innerduct Agreements.

ARTICLE II
EFFECTIVE DATE AND TERM

2.1 Customer will be entitled to use the IRU Innerduct upon the Acceptance of a route Segment. The initial IRU term shall start upon Acceptance ("Effective Date") and shall terminate twenty (20) years from the date of Acceptance of each Segment of the routes described in Exhibit A. Subject to the approval of Provider, which approval shall not be unreasonably withheld, conditioned or delayed, this Innerduct Agreement shall automatically renew for one (1) additional ten (10) year term unless Customer gives Provider written notice of its intent not to renew at least fifteen (15) months prior to the expiration of the then current term or extension or unless Provider gives Customer written notice of its intent not to renew at least fifteen (15) months prior to the expiration of the then current term or extension.

2.2 Expiration or termination of this Innerduct Agreement shall not affect the rights or obligations of any party with respect to any payments of expenses incurred prior to the date of termination or pursuant to Article XII, Taxes; Article XIII, Liability; and Article XXVI, Dispute Resolution.

ARTICLE III
CONSIDERATION

In consideration for the grant of the IRU to Customer by Provider pursuant to Article I, Customer agrees to pay Provider the amount specifically described in Exhibit A to this Innerduct Agreement (the "IRU Fee"). For each IRU granted, a separate Exhibit A, executed by both Parties, will be attached, and titled so as to identify the Innerduct route and resulting IRU Fee. Payment of the IRU Fee shall be in accordance with Article 8.1.

ARTICLE IV
SCHEDULE

The target dates for delivery of route Segments are contained in Exhibit A.

ARTICLE V
ACCEPTANCE

5.1 Upon delivery of a Segment, Provider shall provide Customer the opportunity to perform, subject to the protocols of the Rights-of-Way Innerduct Agreements, and a physical inspection. Customer shall provide an Acceptance Notice to Provider in the form of Exhibit B ("Acceptance Notice") for its IRU Innerduct.

5.2 Upon Acceptance of a Segment and payment of the IRU Fees, Customer shall receive a grant of IRU of Provider's Innerduct.

5.3 Any disputes as to Acceptance of Customer's IRU Innerduct shall be resolved in accordance with Article XXVI.

ARTICLE VI DOCUMENTATION

6.1 Provider shall deliver to Customer complete documentation regarding the as-built condition of the Innerduct. This documentation (referred to as the "Documentation") shall consist of the following:

- (a) As-Built Drawings prepared in accordance with the specifications set forth in Exhibit C.
- (b) Summary of Rights-of-Way and easement providers and recurring fee schedule if any.

6.2 The Documentation shall be supplied within ninety (90) days after Acceptance of each Segment.

ARTICLE VII FRANCHISE/LICENSE/PERMIT FEES

7.1 Permit, easement fees or any other fees related to the construction of Innerduct will initially be the responsibility of and paid for by Provider.

ARTICLE VIII PAYMENT

8.1 The IRU Fee is listed on Exhibits A-1 and A-2.

8.4 Maintenance and repair will be performed in accordance with Article IX.

8.5 Customer shall have the right to audit Provider's books and records relating to Provider's costs which are not fixed in advance and for which Provider, under the terms of this Innerduct Agreement, seeks reimbursement or contribution from Customer.

ARTICLE IX MAINTENANCE AND REPAIR

9.1 For IRU Innerduct that is separate and not in shared conduit: Customer is responsible for all routine maintenance and repair functions and emergency maintenance and repair functions, including "one-call" responses, and locate services.

9.2 For IRU Innerduct that is in shared conduit: Customer is responsible for all routine maintenance and repair functions and emergency maintenance and repair functions on a proportional basis. Grantor is responsible for all "one-call" responses, and locate services. Customer can also locate if they so choose.

9.3 For situations where Customer is utilizing space jointly with Provider in Innerduct (Joint Pathway) or jointly using handholes or manholes: Provider is responsible for all routine maintenance and repair functions and emergency maintenance and repair functions, including "one-call" responses, and locate services. Provider and Customer will share costs associated with emergency repairs or relocation of Joint Pathway Innerduct or handhole/manhole on a proportional basis. Customer cables in such structures shall be labeled identifying the facility owner, cable type and contact telephone number. Customer's cable shall not cross over or impede the moving of any other cable within a handhole/manhole system. Notice of violations will be sent to the facility owner contact and shall be corrected within thirty (30) days or the facility owner may be required to remove the cables, at the discretion of the Provider.

9.4 Provider shall provide reasonable advance notice to Customer of maintenance or repairs that may affect Customer's IRU Innerduct or Joint Pathway. Customer shall have the right, subject to the protocols of the Rights-of-Way providers, to have a representative present any time maintenance or repairs are performed which may affect Customer's IRU Innerduct or Joint Pathway.

9.5 See ARTICLE XVI regarding Innerduct relocation.

ARTICLE X Eliminated for this Innerduct Agreement

ARTICLE XI WARRANTIES

11.1 Provider represents and warrants that all equipment and materials used in the construction of Customer's IRU Innerduct covered by this Innerduct Agreement will be new, of good quality, properly constructed and/or installed, free of defects, and in conformity with the requirements of this Innerduct Agreement. Such warranty shall be effective, with respect to each specific Segment, for the same period of Warranty provided to Provider by its contractors (normally a one (1) year period from date of acceptance by Provider). All work not conforming to the standards may be considered defective by Customer and Provider shall immediately replace any damaged or defective work at its own expense. Provider shall use reasonable efforts to promptly repair or replace all such defective work; provided that Provider shall repair or replace such defective work within thirty (30) days following its confirmation of the defect, unless reasonable circumstances dictate a shorter or longer period, in which event the parties shall in good faith mutually agree upon such period. All replaced defective equipment or items shall become the sole property of Provider.

11.2 Customer's sole and exclusive remedy and Provider's sole and exclusive maximum liability under the warranties contained in this Article shall be, at the sole option of Provider, to repair (with new or functionally operative parts) or replace any defective portion of its Innerduct of which Provider receives notice during the warranty period, provided that Provider is promptly notified in writing upon discovery by Customer that any portion of 's Customer's IRU Innerduct has failed to conform with the terms of this Innerduct Agreement, such writing to include an explanation of alleged defects.

11.3 In addition to the foregoing warranties, Provider assigns to Customer, and Customer shall have the benefit of, any and all contractors' and suppliers' warranties with respect to the material in the Innerduct.

11.4 Provider's warranties do not extend to defects caused by acts of God, accident, fire or other hazard, nor resulting from Customer's, its designees or third parties misuse, neglect, alterations, storage, attempts to repair, or use of other supplies not meeting specifications.

THE FOREGOING WARRANTIES AND REMEDIES CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE PROVIDER INNERDUCT AND ARE EXCLUSIVE REMEDIES IN THE EVENT OF BREACH OF SUCH WARRANTIES. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER FOR ANY REASON.

ARTICLE XII TAXES

12.1 As used in this Article XII, "Tax" or "Taxes" shall mean any and all taxes, assessments, charges, levies, (collectively referred to as "Taxes") imposed by any authority having the power to tax, including any city, county, state, or federal government or quasi-governmental agency or taxing authority.

12.2 Upon Customer's Acceptance of its IRU Innerduct, it shall be responsible for any and all sales, use, income, gross receipts or other Tax assessed on the basis of revenues received by Customer pursuant to its use of its IRU Innerduct. Upon Customer's Acceptance of its IRU Innerduct, it shall be solely responsible for any real or personal property Taxes relating in any way to its IRU Innerduct, and Customer shall reimburse Provider for Customer's Proportionate Share if Provider is assessed and pays any such Tax. Customer shall pay to Provider any sales tax, as required, from the sale or transfer of the IRU Innerduct. The parties shall cooperate to minimize adverse tax consequences and may mutually amend this Innerduct Agreement to improve their respective company's tax positions.

ARTICLE XIII LIABILITY

13.1 Neither Provider nor Customer shall be liable to the other for any indirect, special, punitive or consequential damages (including, but not limited to, any claim from any customer for loss of services) arising under this Innerduct Agreement or from any breach or partial breach of the provisions of this Innerduct Agreement or arising out of any act or omission of either party, its officials, directors, officers, employees, servants, contractors and/or agents. Both Provider and Customer shall include in any Innerduct Agreement with any third party relating to the use of the Provider Innerduct System or Customer's IRU Innerduct a waiver by such third party of any claim for indirect, special, punitive or consequential damages (including, but not limited to, any claim from any client or customer for loss of services) arising out of or as a result of any act or omission by either party, its officials, directors, officers, employees, servants, contractors and/or agents.

13.2 Subject to the limitation on indirect, special, punitive or consequential damages in Article 13.1, each party assumes, releases and agrees to indemnify, defend, protect and save the other (including its directors, officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any property or facilities of the indemnified party arising out of or resulting in any way from the acts or omissions to act, negligence or willful misconduct of the indemnifying party, its directors, officers, employees, servants, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this Innerduct Agreement. The parties expressly recognize and agree that each parties' obligation to indemnify, defend, protect and save the other harmless is not a material obligation to the continuing performance of the parties' other obligations, if any, under the terms of this Innerduct Agreement. If a party shall fail for any reason to indemnify, defend, protect and save the other harmless, the indemnified party hereby expressly recognizes that its sole remedy in such event shall be the right to bring suit against the indemnifying party for its damages as a result of the indemnifying party's failure to so indemnify, defend, protect and save harmless.

13.3 Nothing contained shall operate as a limitation on the right of either party to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of the Provider Innerduct System or any IRU Innerduct; provided, however, that each party shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the injured party to pursue any such action against such third party.

ARTICLE XIV

Eliminated for this Innerduct Agreement

ARTICLE XV
PERMITS AND REQUIRED RIGHTS-OF-WAY

15.1 Provider shall obtain on or before Acceptance with respect to each Segment to be delivered hereunder, any and all right-of-way Innerduct Agreements, easements, licenses, rights, or other Innerduct Agreement necessary for the use of Innerduct, cable, wire, physical plant facilities, and/or access to real property underlying the Provider's Innerduct ("Rights-of-Way"). Further, as of Acceptance, Provider shall obtain any and all rights, licenses, franchises, authorizations, Innerduct Agreements, permits, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) and collectively referred to as "Permits," that are necessary for the installation and operation of Provider's Innerduct. Provider shall obtain all Rights-of-Way and Permits in the name of Provider. In addition, Provider shall use its reasonable best efforts to obtain Rights-of-Way which will allow Customer access to its IRU Innerduct in the presence of Provider's employee or agent. Both Parties shall cooperate to obtain such Rights-of-Way.

15.2 It is expressly understood that Provider's and Customer's obligations under this Innerduct Agreement are conditioned upon and shall in all respects be subject to the continuation or acquisition of such Rights-of-Way and Permits. The Parties shall use their best efforts to obtain or to cause such Rights-of-Way and Permits to remain effective through the Term of this Innerduct Agreement, and any extension thereof. Copies of any and all Innerduct Agreements with respect to the Rights-of-Way and Permits shall be made available to the other Party upon request. If confidentiality obligations under such Innerduct Agreements preclude provision of the entire document, summaries of the substantive provisions thereof will be provided.

ARTICLE XVI
RELOCATION OF INNERDUCT

16.1 If Provider is required to relocate or replace its Innerduct or any of the appurtenant facilities used or required in providing the IRU, Customer will pay proportional costs associated with such move. Provider shall deliver to Customer updated as-built drawings and Documentation with respect to any relocated portion of the Innerduct not later than one hundred eighty (180) days following such relocation.

16.2 Provider shall give Customer sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to use for such relocation; provided that any such relocated Innerduct shall be constructed and inspected in accordance with the specifications and requirements set forth in this Innerduct Agreement. Acceptance of the relocated IRU Innerduct shall be in accordance with Article V of this Innerduct Agreement.

16.3 Customer has the right to review and approve the relocation plans of Provider fourteen (14) days prior to any relocation and has the right to have, subject to the protocols of the Rights-of-Way Innerduct Agreements, a representative present at the time Provider relocates the Innerduct that contains Customer's IRU Innerduct.

ARTICLE XVII INSURANCE

17.1 Customer and Provider shall, itself or through its contractors, each maintain insurance, for the duration of this Innerduct Agreement, as follows:

- (a) Workers' Compensation Insurance complying with the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$500,000 each accident, including occupational disease coverage with limits of \$500,000 each employee, \$500,000 policy limit.
- (b) Comprehensive General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$5,000,000 each person and \$5,000,000 each accident, and Property Damage - \$1,000,000 each accident.
- (c) Railroad Protective Liability Coverage required for any work within fifty (50) feet of a railroad right-of-way: \$2,000,000 or any other amounts required by the Rights-of-Way providers.
- (d) Automobile Liability Insurance for owned, hired and non-owned autos: \$2,000,000 combined single limit bodily injury/property damage.

Insurance amounts contained in this section shall be increased by the respective parties every ten (10) years based upon the increase in the Consumer's Price Index.

17.2 Failure of either party to enforce the minimum insurance requirements listed above shall not relieve the other party of the responsibility for maintaining these coverages. The parties shall furnish to each other certificates of insurance reflecting policies carried and limits of coverage as required above, which shall state that thirty (30) days' notice shall be given prior to cancellation, non-renewal or any material change in any such insurance coverage. The insurance for both parties shall name the other as an additional insured.

17.3 Contractor(s) employed by the parties to work on the Innerduct shall provide and maintain at all times during the provision of services to the parties the same types of and amounts of insurance (with the exception of the amount of Comprehensive General Liability Insurance), which insurance shall be issued by companies approved by the parties.

For Comprehensive General Liability Insurance, contractor(s) shall carry:

- (1) Combined Single Limit: \$2,000,000 each occurrence; and
- (2) Bodily Injury and Property Damage: \$2,000,000 general aggregate, \$1,000,000 products and completed operations aggregate.

The contractor(s) insurance shall be evidenced by certificates of insurance which shall be delivered to the contracting party prior to commencement of the provision of services. The certificates of insurance shall show that the insurance is prepaid and in full force and effect and

that such insurance shall not be canceled, non-renewed or changed during the term of this Innerduct Agreement or during any extension thereof, without at least thirty (30) days written notice to Provider and Customer. The maintenance of insurance by the contractor shall in no way limit or affect the extent of the contractor's liability.

ARTICLE XVIII CONDEMNATION

18.1 In the event any portion of the Provider Innerduct, or the Rights-of-Way in or upon which it has been installed, becomes the subject of a condemnation proceeding by any governmental agency or other party cloaked with the power of eminent domain for public purpose or use, then and in such event, it is agreed that Customer's interest shall be severed from Provider's interest in such proceeding. Customer shall be entitled to independently pursue an award for its interest in such proceedings and the parties Provider agree to have any such condemnation awards specifically allocated between Provider's interest and Customer's interest.

18.2 Upon its receipt of a formal notice of condemnation or taking, Provider shall notify Customer immediately of any condemnation proceeding filed against Provider's Innerduct, including Customer's IRU Innerduct, or the Rights-of-Way in or upon which Customer's IRU Innerduct have been installed. Provider shall also notify Customer of any similar threatened condemnation proceeding and agrees not to sell the Innerduct or release Rights-of-Way to such acquiring agency, authority or other party in lieu of condemnation without the prior written consent of Customer, which consent shall not be unreasonably conditioned, delayed or denied.

18.3 It is expressly recognized and understood by Customer that relocation costs resulting from any such condemnation proceeding may not be reimbursed by the condemning authority and, if Customer requests Provider to relocate Customer's IRU Innerduct, Customer shall pay its Proportionate Share of all costs associated with the relocation of Customer's IRU Innerduct in excess of such costs which were reimbursed by the condemning authority. If Customer's IRU Innerduct is relocated by Provider pursuant to this Article 18.3, Customer shall pay to Provider all condemnation awards given to Customer, if any, that relate to the relocation of that portion of Customer's IRU Innerduct.

ARTICLE XIX

Eliminated for this Innerduct Agreement

ARTICLE XX
ABANDONMENT

Should Customer decide to abandon all or part of its IRU Innerduct, it may do so by informing Provider in writing, such abandonment being made at no cost to either party. Customer shall remove its cable within ninety (90) days of such notification of abandonment by Customer, failing which Provider shall remove same at Customer's cost payable within thirty (30) days of receipt of the invoice. At the time of abandonment, Customer shall have no further rights with respect to its IRU. Such abandonment shall not reduce or otherwise affect Customer's obligations hereunder.

ARTICLE XXI

Eliminated for this Innerduct Agreement

ARTICLE XXII

Eliminated for this Innerduct Agreement

ARTICLE XXIII

Eliminated for this Innerduct Agreement

23.1

ARTICLE XXIV

Eliminated for this Innerduct Agreement

ARTICLE XXV

Eliminated for this Innerduct Agreement

ARTICLE XXVI
DISPUTE RESOLUTION

26.1 It is the intent of Provider and Customer that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution

may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties Provider agree to resolve such disputes in accordance with the provisions of this Article. The obligation herein to arbitrate shall not be binding upon any party with respect to request for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

26.2 Customer and Provider shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties, said letters to be furnished by each party to the other within thirty (30) days from the date of this Innerduct Agreement. Any disputed issues arising during the term of this Innerduct Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral. Either party may modify the designated representative upon written notice to the other party.

26.3 Any claims or disputes arising under the terms and provisions of this Innerduct Agreement, or any claims or disputes which the parties' representatives are unable to resolve within the seventy-two (72) hour time period shall continue to be resolved between the parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

26.4 Any controversies or disputes arising out of or relating to this Innerduct Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Innerduct Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator.

The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Innerduct Agreement, except pursuant to the Innerduct Exchange Agreement, or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties and judgment may be entered thereon in any court having jurisdiction. The Innerduct Agreement to arbitration shall be specifically enforceable under the prevailing arbitration law.

26.5 During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Innerduct Agreement.

ARTICLE XXVII

LIENS

27.1 In the event Customer's IRU Innerduct become subject to any mechanics', artisans' or materialmen's lien, or other encumbrance chargeable to or through Provider which interfere with the IRU Innerduct or jeopardize Customer's use of its IRU Innerduct, Provider shall promptly cause such lien or encumbrance to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to Customer and shall indemnify Customer against all costs and expenses (including attorney's fees) incurred in discharging and releasing such lien or encumbrance; provided, however, that if any such lien or encumbrance is not so discharged and released within thirty (30) days after written notice by Customer to Provider, then Customer may pay or secure the release or discharge thereof at the expense of Provider. Provider shall reimburse Customer for such payments within thirty (30) days of invoice by Customer.

27.2 Provider agrees and acknowledges that it has no right to use any of Customer's IRU Innerduct included in Provider's Innerduct System. Provider shall obtain from any entity in favor of which Provider in its discretion may grant after the date of this Innerduct Agreement a security interest or lien on all or part of Provider's Innerduct System, a written nondisturbance and subordination Innerduct Agreement in form and substance reasonably satisfactory to Customer. The nondisturbance and subordination Innerduct Agreement will be written to the effect that such lienholder acknowledges Customer's and other present or future participants' interest and rights in Customer's IRU Innerduct and the IRU granted by this Innerduct Agreement, and agrees that the same shall not be diminished, disturbed, impaired or interfered with in any adverse respect by such lienholder.

27.3 Customer agrees and acknowledges that it has no right to use any of the Innerduct, other than Customer's IRU Innerduct, included in Provider's Innerduct System and that Customer shall keep any and all of Provider's system, other than Customer's IRU granted in the IRU Innerduct, free from any liens, rights or claims of any third party attributable to Customer. Notwithstanding the aforementioned, Customer shall obtain from any entity in favor of which Customer in its discretion may grant after the date of this Innerduct Agreement a security interest or lien on all or part of such IRU granted by this Innerduct Agreement, a written nondisturbance Innerduct Agreement substantially to the effect that such lienholder acknowledges Provider's and other present or future participants' interest and rights in Provider's Innerduct System and agrees that the same shall not be diminished, disturbed, impaired or interfered with in any adverse respect by such lienholder.

ARTICLE XXVIII MISCELLANEOUS

28.1 The headings of the Articles in this Innerduct Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Innerduct Agreement.

28.2 In construction of this Innerduct Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

28.3 [Intentionally deleted].

28.4 This Innerduct Agreement may be amended only by a written instrument executed by the party against whom enforcement of the modification is sought.

28.5 No failure to exercise and no delay in exercising, on the part of either party, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either party of a breach of any provision of this Innerduct Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Innerduct Agreement unless and until agreed to in writing by both parties.

28.6 In the event of a conflict between the provisions of this Innerduct Agreement and those of the Innerduct Exchange Agreement, to which this Innerduct Agreement is attached and into which this Innerduct Agreement is incorporated, the Innerduct Exchange Agreement provisions shall prevail and the Innerduct Agreement will be corrected accordingly.

28.7 This Innerduct Agreement has been fully negotiated between and jointly drafted by the parties.

28.8 All actions, activities, consents, approvals and other undertakings of the parties in this Innerduct Agreement shall be performed in a reasonable and timely manner.

28.9 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

ARTICLE XXIX COUNTERPARTS

This Innerduct Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

ARTICLE XXX ENTIRE INNERDUCT AGREEMENT

This Innerduct Agreement, and any Exhibits referenced and attached or to be attached, constitute the entire Innerduct Agreement between the parties with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and Innerduct Agreements with respect, whether oral or written.

IN WITNESS WHEREOF the parties have executed this Innerduct Agreement as of the day and year first above written.

CLIMAX TELEPHONE COMPANY.

By: _____

Title: _____

CITY OF KALAMAZOO

By: _____

Title: _____

EXHIBITS:

A: Innerduct Exchange Details, Route maps

B: Form of Acceptance Notice

C: As-Built Drawing Specifications

EXHIBIT A-1

Customer/Provider
Innerduct Agreement and Grant of IRU Effective _____, 2017 Miller Rd

Description of Innerduct Segment: The CTS Innerduct System:
The CTS Innerduct System consists two (2) 1 ¼ inch Innerduct on Miller Rd in Kalamazoo MI from Azo Dr to Portage Rd and one (1) 1 1/4 Innerduct From Azo Dr to River.

Mileage/Footage: 2.46 Miles

Estimated Completion Date: June 25th

Customer/# of Innerducts: 1 innerduct from Portage Rd east to Azo Dr, City also granted access to joint duct from Azo Dr east to River St.

IRU Fees: \$14,753.00 one-time payment for additional hand holes on Miller Rd for City use.

Annual Rights-of-Way Fees: \$0.

Annual Maintenance Fee (per mile/foot): \$0.

Customer: City of Kalamazoo

By:

Its:

Date:

Provider: Climax Telephone Company/CTS Telecom

By:

Its: Vice President of Operations

Date:

Attachment A-1 (Map)

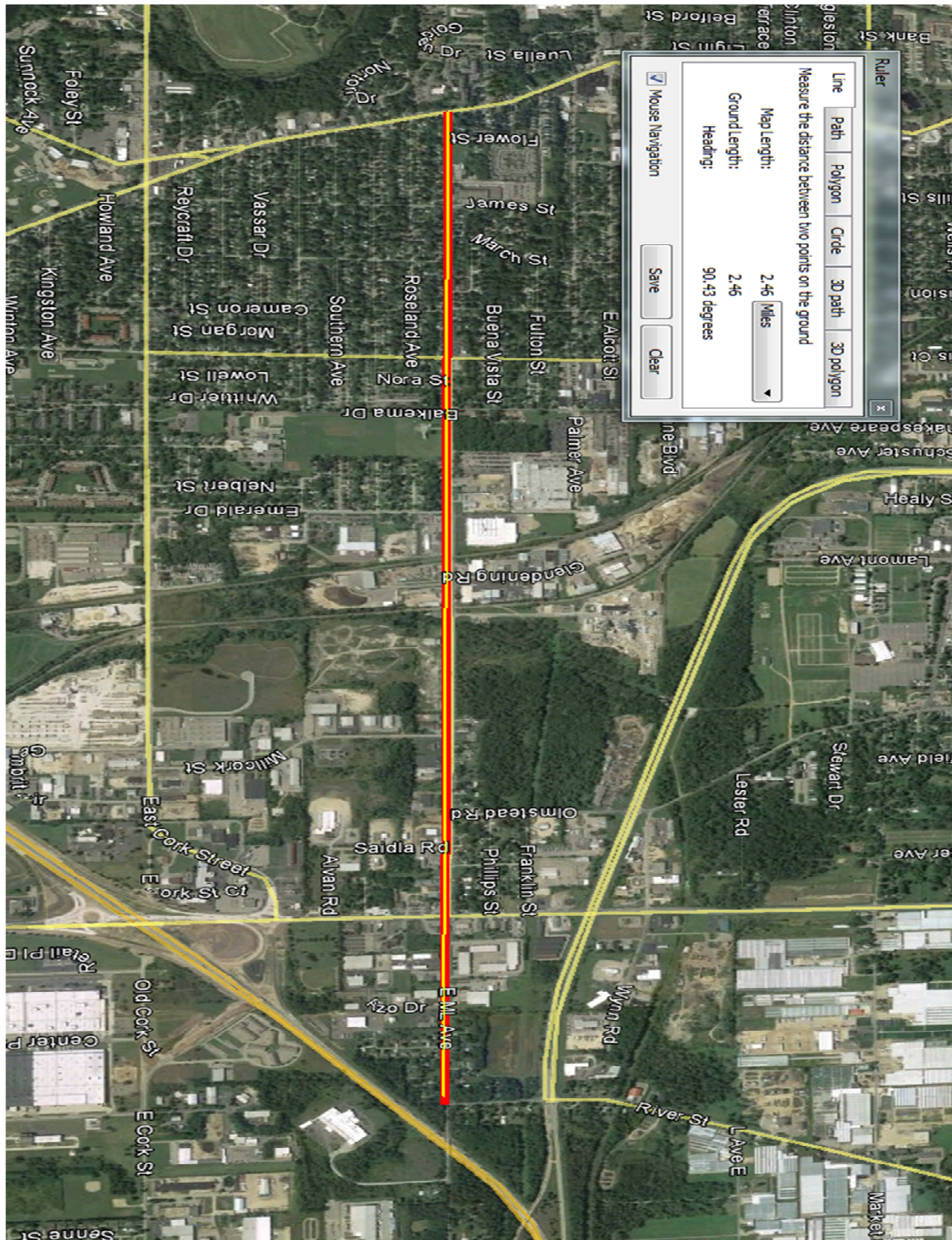


EXHIBIT A-2

Customer/Provider
Innerduct Agreement and Grant of IRU Effective _____, 2017 Portage Rd

Description of Innerduct Segment: The City of Kalamazoo System:
The City of Kalamazoo System consists of multiple Innerducts on Portage Rd in Kalamazoo MI from E Crosstown to I-94.

Mileage/Footage: 3.13 MI

Estimated Completion Date: August 1st

Customer/# of Innerducts: 1 innerduct on Portage Rd from Kilgore Service Rd north to Vine St, CTS also granted access to joint duct on Portage Rd from Vine St to E Crosstown Pkwy.

IRU Fees: \$0.

Annual Rights-of-Way Fees: \$0.

Annual Maintenance Fee (per mile/foot): \$0.

Customer: Climax Telephone Company/CTS Telecom

By:

Its: VP Operations

Date:

Provider: City of Kalamazoo

By:

Its:

Date:

Attachment A-2 (Map)

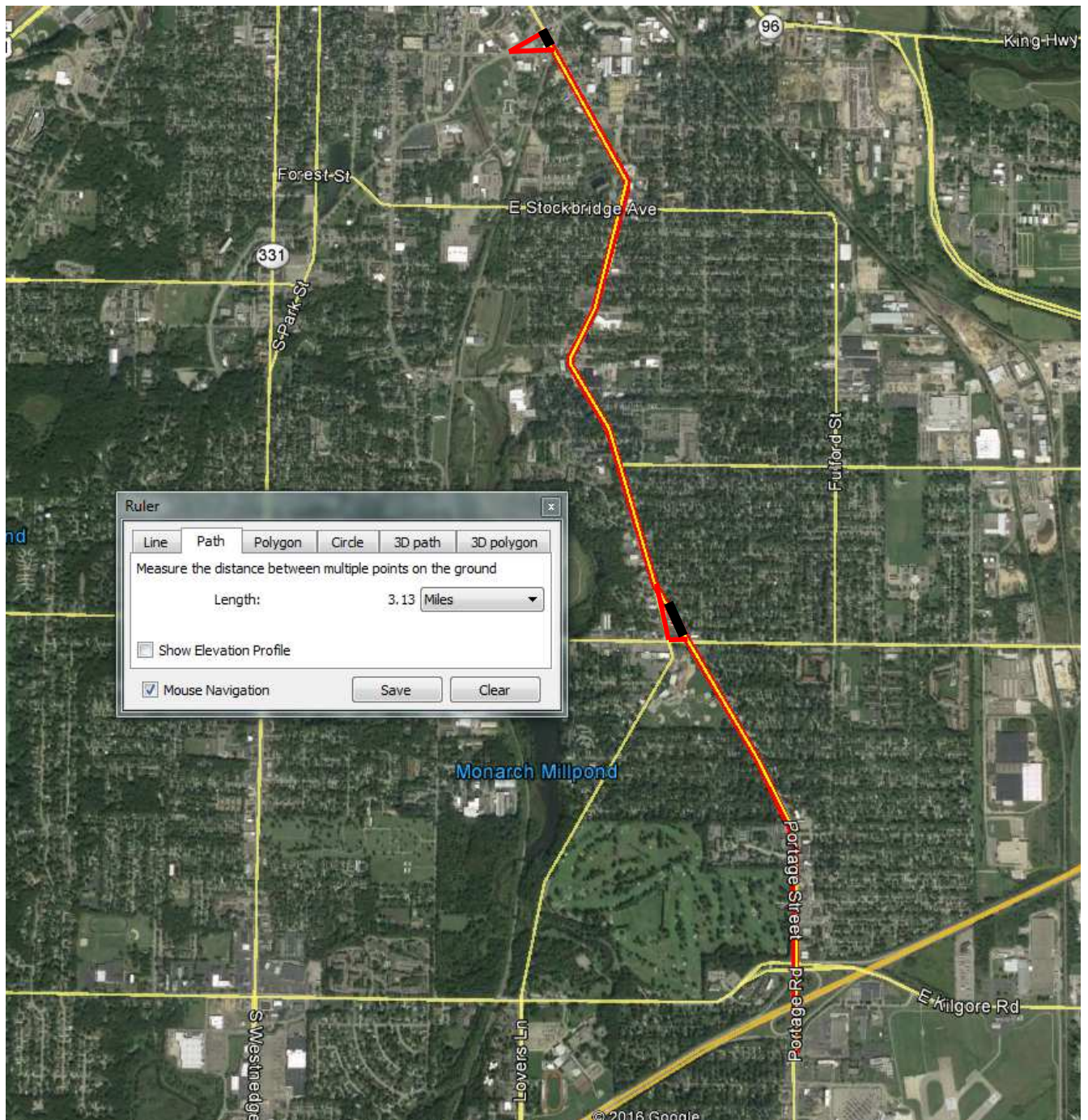


EXHIBIT B-1

FORM OF ACCEPTANCE NOTICE

Pursuant to Article VI of the Innerduct Innerduct Agreement and Grant of IRU between City of Kalamazoo ("Customer") and Climax Telephone Company ("Provider") dated _____, 2017 delivery of Innerduct was made by Provider, to Customer for the Segment described as Innerduct Innerduct Agreement and Grant of IRU Effective _____, 2017 Miller Rd Exhibit A-1. In addition, Customer hereby acknowledges the Work was performed in accordance with the Construction Standards.

Accepted: _____ Customer

Title: _____

Date: _____

EXHIBIT B-2

FORM OF ACCEPTANCE NOTICE

Pursuant to Article VI of the Innerduct Innerduct Agreement and Grant of IRU between Climax Telephone Company ("Customer") and City of Kalamazoo ("Provider") dated _____ 2017 delivery of Innerduct was made by Provider, to Customer for the Segment described as Innerduct Innerduct Agreement and Grant of IRU Effective _____, 2017 Portage Rd Exhibit A-2. In addition, Customer hereby acknowledges the Work was performed in accordance with the Construction Standards.

Accepted: _____ Customer

Title: _____

Date: _____

EXHIBIT C

"AS-BUILT" DRAWING SPECIFICATIONS

1.0 General

The purpose of the As-Built drawings is to clearly document the location and components of the completed Innerduct in order to have the ability to maintain the Innerduct throughout the term of the Innerduct Agreement.

2.0 Format

At a minimum, the "As-Built" drawings will include:

A route diagram that illustrates the location of the:

End Locations

Handhole Locations

Size of Innerduct

Any geographical information deemed necessary to further clarify the route.

EXHIBIT D

CONTACT AND REPAIR ESCALATION LIST

For CTS:

Customer Care Center	269-746-4411	24/7/365
Roy Schoonhoven	269-209-4828	Outside Plant Engineer
Scott Gerdeman	269-217-5431	VP Operations

For the City of Kalamazoo:

Engineering Department	269-337-8601	
Ron Ridenour	269-337-8779	Traffic Signal Technician
Jim Hoekstra	269-337-8612	Traffic Engineer

EXHIBIT D CONT'D.

ROUTINE MAINTENANCE STANDARDS

Maintenance of the Innerduct system should be completed on a regular recurring basis and documented. Properly installed Innerduct normally needs minimal routine maintenance. Most hazards to fiber plant are external in nature. Most destructive events are detected immediately and corrected with plant restoration. A well implemented maintenance plan will permit correction of marginal plant conditions that might otherwise become restoration events.

1.1 INNERDUCT ROUTE SURVEILLANCE

Outside Plant facilities (OSP) are periodically inspected by field personnel. During this periodic inspection the Innerduct route is driven/walked to inspect for discrepancies that may affect Innerduct integrity. Any discrepancies found are documented and forwarded into the Outside Plant Maintenance desk for correction and repair as necessary. The following are some of the OSP items that will be inspected:

- Condition of handholes, route markers and signs
- Construction activity in the area near the Innerduct

1.2 PLANT RELOCATION REQUESTS

Plant relocation requests will be submitted to the manager of field operations to be reviewed for applicable resolution. Requests should be responded to within 10 business days and scheduled as required taking into consideration the scope of work and the urgency of the activity.

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CONDUIT AGREEMENT AND GRANT OF IRU

THIS AGREEMENT ("Agreement") is made, entered into, and effective as of _____ 2017, between, City of Kalamazoo, a Michigan Municipality ("Grantor"), and Climax Telephone Company d/b/a CTS Telecommunications, Inc., a Michigan corporation ("Grantee").

BACKGROUND

- A. Grantee and Grantor are each utilizing Innerduct and Conduit systems in and around Michigan.
- B. Grantor desires to grant to Grantee an Indefeasible Right of Use ("IRU") of Conduit in the Grantor System upon all the terms and conditions set forth below.

DEFINITIONS

The following terms are used in this Agreement:

- A. "Acceptance " means the notice of acceptance or deemed acceptance of a Segment and/or entire route given by Grantee pursuant to Article V after Grantee's IRU Conduit has been inspected and found acceptable.
- B. "Effective Date" is the date the IRU commences after the Conduit is inspected and Grantee accept its IRU Conduit within a Segment.
- C. "Conduit" means buried plastic duct work into which an innerduct or series of innerducts and fiber are placed.
- D. "Indefeasible Right of Use" or "IRU" is an exclusive and irrevocable right, subject to the term in Article II, to use the Grantee IRU Conduit, provided, however, that granting of such IRU does not convey legal title to the Conduit.
- E. "IRU Conduit" means the Conduit obtained by Grantee in Grantor's System.
- F. "Proportionate Share" refers to shared costs or reimbursements calculated by multiplying total costs or reimbursements by the ratio between the number of Grantee's IRU Conduits and the total Conduit count in the affected or adjacent Segment(s).
- G. "Rights-of-Way" see Article XV for definition.
- H. "Segments" are portions of Conduit routes specified in Exhibit A of this Agreement which are capable of being inspected and accepted.
- I. "Grantor Conduit" means the System containing Conduit in which Grantee has an IRU pursuant to the terms of this Agreement.

J. "Joint Pathway" means cables that jointly share and occupy the same innerduct or Conduit.

K. "Term of Agreement" means the length of the Agreement as detailed in Article II.

In consideration of their mutual promises the parties expressly agree as follows:

ARTICLE I GRANT OF IRU

Grantee desires to obtain an IRU for Conduit, paid for by Grantee at time of initial project installation of Grantor Conduit System by Grantee, in the Grantor System specifically described as a Segment in Exhibit A section of this Agreement. From time to time, additional routes may be added by amending or adding Exhibit A attachments to this Agreement. For each IRU granted, a separate Exhibit A, executed by both parties, will be attached as part of the Agreement, titled so as to identify the Conduit route and resulting IRU. Upon Acceptance of a Segment by Grantee, Grantor grants an IRU to Grantee for the IRU Conduit specified in the applicable Exhibit A. Upon Acceptance, Grantor also grants a non-exclusive right to use tangible and intangible property Grantee needs to use its IRU Conduit, including without limitation, hand holes, man holes, troughing, pedestals, and related equipment. Grantee shall be entitled to use its IRU Conduit for any lawful purposes under this Agreement to (i) being bound by all laws, regulations and any requirements of Rights-of-Way agreements relating to access; (ii) appointing Grantor as its agent for matters relating to access to the Rights-of-Way; and (iii) notifying Grantor of any transfer and obtaining transferee's commitment to be bound by the above and the terms and conditions of the Rights-of-Way agreements.

ARTICLE II EFFECTIVE DATE AND TERM

2.1 Grantee will be entitled to use the IRU Conduit upon the Acceptance of a route Segment. The initial IRU term shall start upon Acceptance ("Effective Date") and shall terminate twenty (20) years from the date of Acceptance of each Segment of the routes described in Exhibit A. Subject to the approval of Grantor, which approval shall not be unreasonably withheld, conditioned or delayed, this Agreement shall automatically renew for one (1) additional ten (10) year term unless Grantee gives Grantor written notice of its intent not to renew at least twelve (12) months prior to the expiration of the then current term or extension. Regardless of the above the Term of Agreement shall not extend beyond December 31, 2056.

2.2 Expiration or termination of this Agreement shall not affect the rights or obligations of any party regarding any payments of expenses incurred prior to the date of termination or pursuant to Article XII, Taxes; Article XIII, Liability; and Article XXVI, Dispute Resolution.

ARTICLE III CONSIDERATION

In consideration for the grant of the IRU to Grantee by Grantor pursuant to Article I, Grantee agrees to pay Grantor the fixed and variable costs per Segment specifically described in Exhibit A to this Agreement (the "IRU Fee"). Payment of the IRU Fee shall be in accordance with Article 8.1.

ARTICLE IV SCHEDULE

The target dates for delivery of route Segments are contained in Exhibit A.

ARTICLE V ACCEPTANCE

5.1 Upon delivery of a Segment, Grantor shall provide Grantee the opportunity to perform, subject to the protocols of the Rights-of-Way agreements, a physical inspection.

5.2 Grantee shall be allowed, subject to the protocols of the Rights-of-Way agreements, to conduct its own tests, at Grantee's expense, to determine acceptability of its IRU Conduit.

5.3 Upon Acceptance of each Exhibit A Segment by Grantor and Grantee and payment of the IRU Fees, Grantee shall receive a grant of its IRU Conduit.

5.4 Any disputes as to Acceptance of Grantee's IRU Conduit shall be resolved in accordance with Article XXVI.

ARTICLE VI DOCUMENTATION

6.1 Grantor shall deliver to Grantee complete documentation regarding the as-built condition of the Conduit. This documentation (the "Documentation") shall consist of the following:

- (a) As-Built Drawings prepared in accordance with the specifications set forth in Exhibit B.
- (d) Summary of Rights-of-Way and easement providers and recurring fee schedule if any.

6.2 The Documentation shall be supplied within ninety (90) days after Acceptance of each Segment.

ARTICLE VII FRANCHISE/LICENSE/PERMIT FEES, AND CO-LOCATION AGREEMENTS

7.1 Each party will be responsible for the appropriate government filings, licenses, etc. or other requirements to place its owned or IRU Conduit into operation, including, without limitation, applicable municipal licenses and/or franchise agreements (excluding Rights-of-Way agreements).

7.3 Grantor shall pay any permit, easement fees or any other fees related to the construction of Conduit.

ARTICLE VIII PAYMENT

8.1 The IRU Fee shall be payable: 100% of fees for each Exhibit A shall be billable upon acceptance of Segment with invoice payment due net 30 days.

8.2 Grantee shall be responsible for all inspection of Grantee's IRU Conduit and associated costs.

ARTICLE IX MAINTENANCE AND REPAIR

9.1 Grantor warrants that its Conduit will be maintained in accordance with prevailing telecommunications industry standards, and with the Maintenance Standards contained in Exhibit C of this Agreement.

9.2 Grantor shall perform all routine maintenance and repair of its Conduit; and shall perform emergency maintenance and repair. These maintenance and repair functions, include "one-call" responses, cable locate services, and necessary relocation of Grantor's Conduit containing Grantee's IRU Conduit, shall be performed by Grantor or its designee during the Term of Agreement.

- (a) Emergency Maintenance. Grantor shall respond to any failure, interruption or impairment in the operation of Grantee's IRU Conduit within four (4) hours after receiving a report of any such failure, interruption or impairment. Grantor shall use its reasonable efforts to perform maintenance and repair to correct any failure, interruption or impairment in the operation of Grantee's IRU Conduit within eight (8) hours in accordance with the procedures set forth in Exhibit C.
- (b) Routine Maintenance. Grantor shall schedule and perform specific periodic maintenance and repair checks and services, as set forth in Routine Maintenance Standards, attached as Exhibit C. Additional maintenance can be performed from time to time on Grantee's IRU Conduit at Grantor's reasonable discretion, or upon Grantee's reasonable request with reasonable advance notice to Grantor.

9.3 If Grantor, or others acting on Grantor's behalf, at any time during the Term of Agreement discontinues maintenance and/or repair of Grantor's Conduit, Grantee, or others acting on Grantee's behalf, shall have the right, but not the obligation, to thereafter provide for the maintenance and repair of Grantee's IRU Conduit in Grantor's System at Grantor's sole cost

and expense. Grantee shall use contractors preapproved by Grantor, which approval shall not be unreasonably withheld or delayed, and shall be deemed approved after the expiration of a thirty (30) day notice period. Grantor may discontinue any maintenance and/or repair of Grantor's Conduit upon no less than three (3) months' prior written notice to Grantee. Upon such discontinuance, Grantor shall provide Grantee, or others acting in Grantee's behalf, adequate access to the easements or Rights-of-Way on or within which Grantee's IRU Conduit is located, for the purposes of conducting maintenance and repair of Grantee's IRU Conduit.

9.4 Grantor shall provide reasonable advance notice to Grantee of maintenance or repairs that may affect Grantee's IRU Conduit. Grantee shall have the right, subject to the protocols of the Rights-of-Way providers, to have a representative present any time maintenance or repairs are performed which may affect Grantee's IRU Conduit.

ARTICLE X

SPLICING

Not applicable to this agreement

ARTICLE XI WARRANTIES

11.1 Grantor represents and warrants that all equipment and materials used in the construction of Grantee's IRU Conduit covered by this Agreement will be in usable condition, of good quality, properly constructed and/or installed, free of defects, and in conformity with the requirements of this Agreement. Such warranty shall be effective, with respect to each specific Segment, for the same period of Warranty provided to Grantor by its contractors (normally a one (1) year period from date of acceptance by Grantor). If requested by Grantee, Grantor shall at its expense replace any Conduit not conforming to the above standards. Grantor shall use reasonable efforts to promptly repair or replace all such defective work (including Conduit) within thirty (30) days following its confirmation of the defect, unless reasonable circumstances dictate a shorter or longer period, in which event the parties shall in good faith mutually agree upon such period. All replaced defective equipment or items shall become the sole property of Grantor.

11.2 Grantee's sole and exclusive remedy and Grantor's sole and exclusive maximum liability under the warranties contained in this Article shall be, at the sole option of Grantor, to repair (with new or functionally operative parts) or replace any defective portion of its Conduit of which Grantor receives notice during the warranty period, provided that Grantor is promptly notified in writing upon discovery by Grantee that any portion of Grantee's IRU Conduit has failed to conform with the terms of this Agreement, such writing to include an explanation of alleged defects.

11.3 In addition to the foregoing warranties, Grantor assigns to Grantee, and Grantee shall have the benefit of, any and all contractors' and suppliers' warranties with respect to the material in the Conduit.

11.4 Grantor's warranties do not extend to defects caused by acts of God, accident, fire or other hazard, nor resulting from Grantee's, its designees or third parties misuse, neglect, alterations, storage, attempts to repair, or use of other supplies not meeting specifications.

THE FOREGOING WARRANTIES AND REMEDIES CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE Grantor Conduit AND ARE EXCLUSIVE REMEDIES IN THE EVENT OF BREACH OF SUCH WARRANTIES. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL IN ANY EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER FOR ANY REASON.

ARTICLE XII TAXES

12.1 As used in this Article XII, "Tax" or "Taxes" shall mean any and all taxes, assessments, charges, levies, (collectively referred to as "Taxes") imposed by any authority having the power to tax, including any city, county, state, or federal government or quasi-governmental agency or taxing authority.

12.2 Upon Grantee's Acceptance of its IRU Conduit, it shall be responsible for all sales, use, income, gross receipts or other Tax assessed on the basis of revenues received by Grantee for its use of its IRU Conduit. Further, Grantee shall be solely responsible for any real or personal property Taxes regarding its IRU Conduit, and Grantee shall reimburse Grantor for Grantee's Proportionate Share if Grantor is assessed and pays any such Tax.

ARTICLE XIII

LIABILITY

13.1 Neither Grantor nor Grantee shall be liable to the other for any indirect, special, punitive or consequential damages (including, but not limited to, any claim from any customer for loss of services) arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of either party, its directors, officers, employees, representatives, contractors and/or agents. Both Grantor and Grantee shall include in any agreement with any third party relating to the use of the Grantor Conduit or Grantee's IRU Conduit a waiver by such third party of any claim for indirect, special, punitive or consequential damages (including, but not limited to, any claim from any client or customer for loss of services) arising out of or as a result of any act or omission by either party, its directors, officers, employees, representatives, contractors and/or agents.

13.2 Subject to the limitation on indirect, special, punitive or consequential damages in Article 13.1, each party assumes, releases and agrees to indemnify, defend, protect and save the other (including its directors, officers, agents, representatives and employees) harmless from and against any claim, damage, loss, liability, injury, cost and expense (including reasonable attorney's fees and expenses) in connection with any loss or damage to any property or facilities of the indemnified party arising out of or resulting in any way from the acts or omissions to act,

negligence or willful misconduct of the indemnifying party, its directors, officers, employees, representatives, contractors and/or agents in connection with the exercise of its rights and obligations under the terms of this Agreement. The parties expressly recognize and agree that each parties' obligation to indemnify, defend, protect and save the other harmless is not a material obligation to the continuing performance of the parties' other obligations, if any, under the terms of this Agreement. If a party shall fail for any reason to indemnify, defend, protect and save the other harmless, the indemnified party expressly recognizes that its sole remedy in such event shall be the right to bring suit against the indemnifying party for its damages as a result of the indemnifying party's failure to so indemnify, defend, protect and save harmless.

13.3 No provision under this Article XIII shall operate as a limitation on the right of either party to bring an action for damages, including consequential damages, against any third party based on any acts or omissions of that third party which may affect the construction, operation or use of the Grantor System or any IRU Conduit. Further, each party shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the injured party to pursue any such action against such third party.

13.4 It is understood that regardless of any other provision above to the contrary Grantor reserves all its rights under the doctrine of governmental immunity for itself and its officials or employees.

ARTICLE XIV FORCE MAJEURE

The obligations of the parties hereto are subject to force majeure and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor dispute; accidents; acts of God; fire; flood; earthquake; lightning; unusually severe weather; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefore; lack of transportation; legal inability to access property; acts of any governmental authority; government codes, ordinances, laws, rules and regulations or restrictions (collectively "Regulations") (but not to the extent the delay caused by such Regulations could be avoided by rerouting the Conduit if such a reroute was commercially reasonable); condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of either party hereto. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. Notification to be given by the excused party of the cause and of the estimated duration, when possible. The deadline for a Party's performance of an obligation under this Agreement shall be postponed by the period of time by which the Party's ability to perform that obligation is materially prevented or interfered with by a Force Majeure event.

ARTICLE XV
PERMITS AND REQUIRED RIGHTS-OF-WAY

15.1 Grantor shall obtain on or before Acceptance with respect to each Segment to be delivered hereunder, any and all right-of-way agreements, easements, licenses, rights, or other agreement necessary for the use of conduit, physical plant facilities, and/or access to real property underlying the Grantor's Conduit ("Rights-of-Way"). Further, as of Acceptance, Grantor shall obtain any and all rights, licenses, franchises, authorizations, agreements, permits, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) and collectively referred to as "Permits," that are necessary for the installation and operation of Grantor's Conduit. Grantor shall obtain all Rights-of-Way and Permits in the name of Grantor. In addition, Grantor shall use its reasonable best efforts to obtain Rights-of-Way which will allow Grantee access to its IRU Conduit in the presence of Grantor's employee or agent. Both parties shall cooperate to obtain such Rights-of-Way.

15.2 It is expressly understood that Grantor's and Grantee's obligations under this Agreement are conditioned upon and shall in all respects be subject to the continuation or acquisition of such Rights-of-Way and Permits. The parties shall use their best efforts to obtain or to cause such Rights-of-Way and Permits to remain effective through the Term of this Agreement, and any extension thereof. Copies of any and all agreements with respect to the Rights-of-Way and Permits shall be made available to the other party upon request. If confidentiality obligations under such agreements preclude provision of the entire document, summaries of the substantive provisions thereof will be provided.

ARTICLE XVI
RELOCATION OF CONDUIT

16.1 If Grantor is required to relocate or replace its Conduit or any of the appurtenant facilities used or required in providing the IRU, Grantee shall reimburse Grantor for Grantee's Proportionate Share of such costs as described in Exhibit A. If a third party reimburses Grantor for all or a portion of the cost to perform such work, then this reimbursement amount shall reduce on a dollar for dollar basis the aggregate amount of costs deemed to have been spent by Grantor. Grantor shall deliver to Grantee updated as-built drawings and Documentation with respect to any relocated portion of the Conduit not later than one hundred eighty (180) days following such relocation.

16.2 Grantor shall give Grantee sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, without limitation, the right to determine the extent of, the timing of, and methods to use for such relocation. The relocated Conduit shall be constructed and inspected in accordance with the specifications and requirements set forth in this Agreement. Acceptance of the relocated IRU Conduit shall be in accordance with Article V of this Agreement. In addition, Grantor shall use reasonable efforts to ensure relocation shall not result in an adverse change to the operations, performance, or connection points with the network of Grantee, or end points of the applicable Conduit.

16.3 Grantee has the right to review and approve the relocation plans of Grantor fourteen (14) days prior to any relocation and has the right to have, subject to the protocols of the Rights-of-

Way Agreements, a representative present at the time Grantor relocates the System that contains Grantee's IRU Conduit.

ARTICLE XVII INSURANCE

17.1 Grantee and Grantor shall, itself or through its contractors, each maintain insurance, for the duration of this Agreement, as follows:

- (a) Workers' Compensation Insurance complying with the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$500,000 each accident, including occupational disease coverage with limits of \$500,000 each employee, \$500,000 policy limit.
- (b) Comprehensive General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$1,000,000 each person and \$1,000,000 each accident, and Property Damage - \$1,000,000 each accident.
- (c) Automobile Liability Insurance for owned, hired and non-owned autos: \$2,000,000 combined single limit bodily injury/property damage.

Insurance amounts contained in this section may be increased by the respective parties to meet industry or governmental standards.

17.2 Failure of either party to enforce the minimum insurance requirements listed above shall not relieve the other party of the responsibility for maintaining these coverages. The parties shall furnish to each other certificates of insurance reflecting policies carried and limits of coverage as required above, which shall state that thirty (30) days notice shall be given prior to cancellation, non-renewal or any material change in any such insurance coverage. The insurance for both parties shall name the other as an additional insured.

17.3 Contractor(s) employed by the parties to work on the Conduit System shall provide and maintain at all times during the provision of services to the parties the same types of and amounts of insurance which insurance shall be issued by companies approved by the parties.

- (a) Workers' Compensation Insurance complying with the law of the state or states in which the services are to be provided and Employers Liability Insurance with the limits of \$500,000 each accident, including occupational disease coverage with limits of \$500,000 each employee, \$500,000 policy limit.
- (b) Comprehensive General Liability Insurance, including premises, operations, products and completed operations, contractual, broad form property damage, independent contractors and personal injury with the following minimum limits: Personal Injury - \$1,000,000 each person and \$1,000,000 each accident, and Property Damage - \$1,000,000 each accident.

- (c) Automobile Liability Insurance for owned, hired and non-owned autos: \$2,000,000 combined single limit bodily injury/property damage.

For Comprehensive General Liability Insurance, contractor(s) shall carry:

- (1) Combined Single Limit: \$2,000,000 each occurrence; and
- (2) Bodily Injury and Property Damage: \$2,000,000 general aggregate, \$1,000,000 products and completed operations aggregate.

The contractor(s) insurance shall be evidenced by certificates of insurance which shall be delivered to the contracting party prior to commencement of the provision of services. The certificates of insurance shall show that the insurance is prepaid and in full force and effect and that such insurance shall not be canceled, non-renewed or changed during the Term of Agreement, without at least thirty (30) days written notice to Grantor and Grantee. The maintenance of insurance by the contractor shall in no way limit or affect the extent of the contractor's liability.

ARTICLE XVIII CONDEMNATION

18.1 If any portion of the Grantor Conduit System, or the Rights-of-Way in or upon which it has been installed, becomes the subject of a condemnation proceeding by any governmental agency or other party cloaked with the power of eminent domain for public purpose or use, then and in such event, it is agreed that Grantee's interest (being its Proportionate Share) shall be severed from Grantor's interest in such proceeding. Grantee shall be entitled to independently pursue an award for its interest in such proceedings and the parties hereto agree to have any such condemnation awards specifically allocated between Grantor's interest and Grantee's interest. If Grantee's interest in such proceeding cannot be severed from Grantor's interest, Grantee shall be entitled to receive its Proportionate Share of the award for its interest in Grantee's IRU Conduit and occupancy of the Rights-of-Way.

18.2 Upon its receipt of a formal notice of condemnation or taking, Grantor shall notify Grantee immediately of any condemnation proceeding filed against Grantor's Conduit System, including Grantee's IRU Conduit, or the Rights-of-Way in or upon which Grantee's IRU Conduit has been installed. Grantor shall also notify Grantee of any similar threatened condemnation proceeding and agrees not to sell the Conduit System or release Rights-of-Way to such acquiring agency, authority or other party in lieu of condemnation without the prior written consent of Grantee, which consent shall not be unreasonably conditioned, delayed or denied.

18.3 It is expressly recognized and understood by Grantee that relocation costs resulting from any such condemnation proceeding may not be reimbursed by the condemning authority and, if Grantee requests Grantor to relocate Grantee's IRU Conduit, Grantee shall pay its Proportionate Share of all costs associated with the relocation of Grantee's IRU Conduit in excess of such costs which were reimbursed by the condemning authority. If Grantee's IRU Conduit are relocated by Grantor pursuant to this Article 18.3, Grantee shall pay to Grantor all condemnation awards given to Grantee, if any, that relate to the relocation of that portion of Grantee's IRU Conduit.

ARTICLE XIX CONFIDENTIALITY

19.1 Subject to Article 19.3 Grantee and Grantor represent, certify, and warrant that they shall use their best reasonable efforts to ensure that any proprietary or confidential information and documents (collectively “Confidential Documents”) obtained from the other party pertaining to this Agreement will be held in strict confidence with at least the same degree of care that it affords its own confidential information and will not be used by the receiving party, its employees, subcontractors, consultants or agents for any purpose other than its performance required by this Agreement.

19.2 All documents, data, or information furnished by Grantee or Grantor is the sole property of that party. Upon the expiration the Term of Agreement, those documents, data, or information shall be returned to its owner if readily available.

19.3 Grantee understands that any Confidential Documents submitted by Grantee to Grantor may meet the definition of a public record and therefore subject to release to the public under the Freedom of Information Act, Act (“**FOIA**”), as amended, (MCL 15.231 et. seq.). Consequently, unless specifically allowed under FOIA, Grantee will not raise a claim of trade secrets or other privilege or exception under FOIA as it relates to this Agreement or such Confidential Documents.

ARTICLE XX ABANDONMENT

Should Grantee decide to abandon all or part of its IRU Conduit, it may do so by informing Grantor in writing, such abandonment being made at no cost to either party. Grantee shall remove its fiber optic cable within thirty (60) days of such notification of abandonment by Grantee, failing which Grantor shall remove same at Grantee's cost payable within thirty (30) days of receipt of the invoice. At the time of abandonment, Grantee shall have no further rights with respect to its IRU. Such abandonment shall not reduce or otherwise affect Grantee's obligations under this Agreement.

ARTICLE XXI DEFAULT

21.1 Neither party shall be in default under this Agreement until the other party gives the defaulting party written notice of such default and the defaulting party failed to cure that default within thirty (30) days after receipt of such notice; unless a default cannot be reasonably cured within the thirty (30) day period and the defaulting party promptly proceeded to cure the default with due diligence within that 30-day period. The extension of time for curing the default shall not, however, exceed ninety (90) days from the date of receipt of the default notice.

21.2 Upon the failure by the defaulting company to timely cure any default after notice from the non-defaulting party, the non-defaulting party may take any action it determines, in its

discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach.

21.3 The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to injunctive or similar preliminary relief to prevent or cure breaches of the provisions of this Agreement by the other and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they may be entitled by law or equity.

21.4 An event of default is considered to have occurred if a party becomes insolvent, or institutes or has instituted against it bankruptcy proceedings which are not dismissed within ninety (90) days of filing, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, and the non-defaulting party may immediately terminate this Agreement.

ARTICLE XXII NOTICES

22.1 Unless otherwise provided, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to Grantee:

Climax Telephone Company
13800 E. Michigan Ave.
Galesburg, MI 49053
ATTN: President

If to Grantor:

City of Kalamazoo
241 W. South St.
Kalamazoo, MI 49007
ATTN: City Manager

22.2 Unless otherwise provided, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgment of delivery, and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit; or commercial overnight delivery service, upon verification of receipt.

ARTICLE XXIII ASSIGNMENT, SUCCESSION

23.1 Grantee shall not assign this Agreement to any other party without the prior written consent of Grantor, except Grantee shall have the right to assign, sublet or otherwise transfer this Agreement, in whole or in part, to: (i) any parent, subsidiary or affiliate of Grantee; or (ii) any person, firm or corporation which shall control, be under the control of or be under common control with Grantee; or (iii) any corporation or entity into which Grantee or a subsidiary of Grantee may be merged or consolidated or which purchases all or substantially all of the assets of Grantee or a subsidiary of Grantee.

23.2 Grantor shall not assign this Agreement to any other party without the prior written consent of Grantee, except Grantor shall have the right to assign, sublet or otherwise transfer this

Agreement, in whole or in part, to any authority or other entity formed or created under Michigan law to own or operate the Grantor Conduit

23.3 Subject to the provisions of this Article each of the parties' respective rights and obligations, shall be binding upon and shall inure to the benefit of the parties and each of their respective permitted successors and assigns.

ARTICLE XXIV GOVERNING LAW

This Agreement shall be interpreted and construed in accordance with the laws of the state of Michigan, without regard to its conflict of laws principles.

ARTICLE XXV INDEPENDENT CONTRACTOR

The performance by Grantee and/or Grantor of all duties and obligations under this Agreement shall be as independent contractors and not as agents of the other party, and no persons employed or utilized by a performing party shall be considered the employees or agents of the other. Neither party shall have the authority to enter into any agreement purporting to bind the other without its specific written authorization. The parties agree that this Agreement does not create a partnership between, or a joint venture of Grantee and Grantor.

ARTICLE XXVI DISPUTE RESOLUTION

26.1 It is the intent of Grantor and Grantee that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties agree to resolve such disputes in accordance with the provisions of this Article. The obligation to arbitrate shall not be binding upon any party with respect to request for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.

26.2 Grantee and Grantor shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties; each party to provide these letters to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within three (3) business days of such referral. Either party may modify the designated representative upon written notice to the other party.

26.3 Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties' representatives are unable to resolve within the three business day period shall continue to be resolved between the parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

26.4 Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator.

The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Agreement, or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law.

26.5 During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Agreement.

ARTICLE XXVII LIENS

27.1 If Grantee's IRU Conduit becomes subject to any mechanics', artisans' or materialmen's lien, or other encumbrance chargeable to or through Grantor which interfere with the IRU Conduit or jeopardize Grantee's use of its IRU Conduit, Grantor shall promptly cause the discharge or release of record such lien or encumbrance (by payment, posting of bond, court deposit or other means) without cost to Grantee. However, if Grantor fails discharge or release any such lien or encumbrance within thirty (30) days after written notice by Grantee to Grantor, then Grantee may pay or secure such action at the expense of Grantor. Grantor shall reimburse Grantee for those payments (including attorney's fees) within thirty (30) days of invoice by Grantee.

27.2 Grantor agrees and acknowledges that it has no right to use any of Grantee's IRU Conduit included in Grantor's System. Grantor shall obtain from any entity in favor of which Grantor in its discretion may grant after the date of this Agreement a security interest or lien on all or part of Grantor's System, a written non-disturbance and subordination agreement in form and substance reasonably satisfactory to Grantee. The non-disturbance and subordination agreement will be written to the effect that such lien holder acknowledges Grantee's and other present or future

participants' interest and rights in Grantee's IRU Conduit and the IRU granted by this Agreement, and agrees that the same shall not be diminished, disturbed, impaired or interfered with in any adverse respect by such lien holder.

27.3 Grantee agrees and acknowledges that it has no right to use any of the Conduit, other than Grantee's IRU Conduit, included in Grantor's System and that Grantee shall keep any and all of Grantor's system, other than Grantee's IRU granted in the IRU Conduit, free from any liens, rights or claims of any third party attributable to Grantee. However, Grantee shall obtain from any entity in favor of which Grantee in its discretion may grant after the date of this Agreement a security interest or lien on all or part of such IRU granted by this Agreement, a written non-disturbance agreement substantially to the effect that such lien holder acknowledges Grantor's and other present or future participants' interest and rights in Grantor's System and agrees that the same shall not be diminished, disturbed, impaired or interfered with in any adverse respect by such lien holder.

ARTICLE XXVIII MISCELLANEOUS

28.1 The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Agreement.

28.2 In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.

28.3 No provision of this Agreement shall be interpreted to require any unlawful action by either party. If any section or clause of this Agreement is held to be invalid or unenforceable, then the meaning of that section or clause shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save the section or clause, it shall be severed from this Agreement with respect to the matter in question, and the remainder of the Agreement shall remain in full force and effect. However, if such section or clause is an essential element of the Agreement, the parties shall promptly negotiate a replacement that will achieve the intent of such unenforceable section or clause to the extent permitted by law.

28.4 This Agreement may be amended only by a written instrument executed by the party against whom enforcement of the modification is sought.

28.5 No failure to exercise and no delay in exercising, on the part of either party, any right, power or privilege hereunder shall operate as a waiver, except as expressly provided under this Agreement. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.

28.6 If a conflict between the provisions of this Agreement and those of Exhibit A, the provisions of Exhibit A shall prevail and the Agreement will be corrected accordingly. If there is a conflict between this Agreement and other Exhibits, this Agreement shall prevail.

28.7 This Agreement has been fully negotiated between and jointly drafted by the parties.

28.8 All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner.

28.9 Unless expressly defined herein, words having well known technical or trade meanings shall be so construed.

ARTICLE XXIX
COUNTERPARTS

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

ARTICLE XXX
ENTIRE AGREEMENT

This Agreement, and any Exhibits referenced and attached hereto or to be attached hereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

Grantee : Climax Telephone Company d/b/a CTS Telecommunications, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Grantor: City of Kalamazoo

By: _____

Name: James K. Ritsema

Title: City Manager

Date: _____

EXHIBITS:

A: Form of Acceptance

B: As-Built Drawing Specifications

C: Maintenance and Repair

EXHIBIT A

FORM OF ACCEPTANCE

Pursuant to Article VI of the Conduit Agreement and Grant of IRU between City of Kalamazoo ("Grantor") and Climax Telephone Co. ("Grantee") dated _____ 2017, delivery of the following Conduit was made by Grantor, to Grantee for the Segment described as Miller Rd/Glendenning west RR tracks See attached drawings.

1. Joint pathway in conduit under rail road tracks west of Glendenning on Miller Rd Kalamazoo MI.

IRU Fee: No monthly, yearly, or one time fees involved in this Segment.

Accepted:

Grantee – Climax Telephone Company

Grantor – City of Kalamazoo

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B

"AS-BUILT" DRAWING SPECIFICATIONS

1.0 General

The purpose of the As-Built drawings is to clearly document the location and components of the completed Conduit in order to have the ability to maintain the Conduit throughout the term of the Agreement.

2.0 Format

At a minimum, the "As-Built" drawings will include:

A route diagram that illustrates the location of the:

End Locations

Handhole and Manhole locations

A summary of distances between the locations listed above.

Any geographical information deemed necessary to further clarify the route.

Detailed route information that includes:

Street, road and highway names

Railroad and major highway crossings

Bridge crossings

Manhole and pole identification

Manhole-to-manhole distances in feet

EXHIBIT C

MAINTENANCE AND REPAIR PROCEDURES AND TIME FRAMES

GRANTOR MAINTENANCE AND CALL OUT LIST

Upon Grantor's Network Management Center receiving a trouble report from Grantee, Grantor will dispatch qualified personnel to the location of the outage within 4 hours. At the same time the call will be escalated to Grantor's Field Operations Manager. Grantor's Field Operations Manager will respond with on call qualified personnel to isolate the problem. The problem will then be escalated to Grantor's Vice President/General Manager for notification.

Title

Home

Pager

Cellular

EXHIBIT C CONT'D.

ROUTINE MAINTENANCE STANDARDS

1.1 PLANT LOCATION REQUESTS

All facilities associated with this agreement are located in states with statewide "one call" agencies for excavators to request and notify utilities of digging in the vicinity of Grantor's facilities. Grantor will subscribe to these services and follow the guidelines and laws applicable to that state including the marking of their facilities within 48 hours of receipt of request. Grantor will also take action to insure excavator is aware and protect the facility during the excavation as required.

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CO-LASH AGREEMENT

This is an agreement between CLIMAX TELEPHONE COMPANY dba CTS Telecommunications, Inc., 13800 E Michigan Galesburg Michigan 49053 (hereinafter "CTS") and CITY OF KALAMAZOO (hereinafter "CITY") (each individually referenced herein as "Party," and collectively as the "Parties"), which will be effective upon the date of execution of both parties,

WHEREAS, CTS's telecommunications network presently has aerial strand and fiber optic cable attached to existing utility poles within the city limits of Kalamazoo, Michigan, as well as other locations in Michigan and,

Whereas, CITY owns and utilizes fiber optic cable and is involved in the design, construction, installation operation and maintenance of an City-wide fiber optic telecommunications network, through which data and video signals will be transmitted, that follows some common routes as CTS's telecommunications network.

WHEREAS, it is in the public interest to conserve space in the public right-of-way, and,

WHEREAS, CTS is willing to allow CITY to co-lash CITY's cable on CTS's existing cable pursuant to the terms and conditions set forth in this Agreement.

IN CONSIDERATION OF THE MUTUAL REPRESENTATIONS AND OBLIGATIONS SET FORTH IN THIS AGREEMENT, IT IS THEREFORE AGREED BETWEEN THE PARTIES:

A. Duties and Responsibilities of the Parties

1. CTS agrees to allow CITY to co-lash CITY fiber optic cable to CTS existing strand and cable as described on project drawings attached hereto as **Attachment A** and **Attachment B**. CITY will notify CTS of proposed co-lash locations prior to their construction, and locations of co-lashed facilities will be added as attachments to and made part of this Agreement. No fees or charges shall be paid by CITY to CTS for this right to co-lash except as provided for in this Agreement.

All splicing of the cable sheath containing any CITY fiber optic filaments along the joint route, shall be performed by CITY or an individual or entity authorized by CITY after the date of this Agreement. CTS shall provide CITY and/or its authorized representatives with reasonable access to the fiber optic filaments residing in the cable sheath in order to make any modifications and/or movements that CITY deems necessary, or which may be required as a result of modifications necessitated by changes in any rights-of-way, easements, permits, licenses or pole attachment requirements.

CO-LASH AGREEMENT

2. CITY agrees to be responsible for any make-ready costs associated with the utility poles where co-lashed with CTS's existing strand and cable, and to be responsible for any additional charges, including, without limitation, pole rentals where co-lashed with CTS's existing strand and cable, and remediation of any National Electric Safety Code ("NESC") violations that CTS may owe the pole owner, or otherwise incur, as a result of the co-lashed cable.
3. CITY shall bear any current and future costs associated with preventive maintenance of the CTS cable to which it is co-lashed.
4. Preventive Maintenance shall include, but is not limited to, the following: (i) tree trimming, after initial installation, and (ii) make-ready and pole transfers for the poles associated with this Agreement.
5. CITY shall install and maintain its cable at no cost to CTS. No ongoing fees or charges related to this co-lash agreement shall be paid by CITY to CTS except as provided for in this Agreement.
6. CITY acknowledges and agrees that it will be responsible for moving, removing, or changing any of its co-lashed cable, and the associated costs incurred therewith, in the event that CTS is required to move, remove, or change its cable because of a request from the applicable owner of the utility poles to which such cable is attached.
7. CITY agrees that it will not make any claims against CTS for service outages or other problems resulting from upgrade reconstruction, or from causes outside CTS's control, such as Act of God or automobile accidents. CTS shall have priority over CITY in the restoration of service during a service outage.
8. CITY further agrees that it will include in all contracts, and require to be included in all subcontracts entered into in connection with, or pertaining to work on CTS cable, a provision requiring the contractor or subcontractor at all times while performing work operations or other services pertaining to facilities installed pursuant to this Agreement to assume all responsibility for: (i) bodily injury to persons, including death and damages, sustained or claimed by its employees, the employees of CTS or any other person, and (ii) also for damage to property, including property of CTS which may occur or allegedly occur because of, or result from, or in any manner are connected with directly or indirectly arise out of or are caused in whole or in part by the actions, operations, or omissions of said contractor or subcontractor.
9. CITY further agrees to fully indemnify and hold CTS harmless from any and all claims of any nature arising as a result of CITY's installation, operation, or maintenance of its network or use of its cable co-lashed to CTS's cable. CITY agrees to indemnify and hold harmless CTS, its directors, officers, agents, employees, predecessors-in-interest, successors or assigns from any and all

CO-LASH AGREEMENT

liability and claims for damages or injury, including all costs, attorney fees, expenses, and liabilities incurred in connection with any such action or proceeding brought against CTS, its directors, officers, agents, employees, predecessors-in-interest, successors and assigns by reason of any claims caused by or resulting from the acts or omissions by CITY, its employees, agents or invitees or in connection with CITY's performance of this Agreement. CITY shall further indemnify and save CTS harmless from any and all claims arising from any breach or default on the part of CITY in the performance of this Agreement.

10. During the term of this Agreement CITY will maintain insurance of types and amounts satisfactory to CTS to protect its directors, officers, and employees against professional liability, general liability, workers' compensation claims, personal injury and other claims arising from any act or omission of CITY within the scope of this Agreement. CTS will promptly notify CITY of the existence of any such claim, as soon as it has been asserted in writing.

B. Representations, Certifications and Warranties

11. CITY represents and warrants that it is feasible to co-lash cable to CTS existing cable without interference to CTS's use of its cable.
12. CITY will provide certification that co-lashing to the CTS existing cable will not exceed load limits on the cable supports or poles. In the event that the pole owner does not agree, CITY will be responsible for any costs incurred to satisfy the pole owner's concerns or requirements.
13. CTS represents and warrants that it has secured all necessary governmental approvals, approval of the applicable pole owner, and approval of any applicable private property owner, to install a fiber optic cable as described in project drawings attached hereto as **Attachment A** and **Attachment B**.
14. CITY represents and warrants that co-lashing its fiber optic cable to CTS existing cable and strand will not cause any damage or interference in the use of CTS cable, and in the unlikely event that any damage occurs to CTS cable or facilities, CITY will promptly repair or replace any damage caused by CITY's co-lashing. Any persistent damage caused by the CITY fiber to the CTS fiber will result in alternate methods of co-lashing to be determined.

C. Miscellaneous

15. Neither this Agreement nor any part of it shall be assigned by either party without the prior written consent of the other party. The consent shall not be unreasonably withheld.
16. Succession: Each Party's respective rights and obligations hereunder, shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

CO-LASH AGREEMENT

17. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all counterparts, when taken together, will constitute on and the same agreement. In addition, the Parties agree that signatures on this Agreement, as well as other documents to be executed under this Agreement, if any, may be delivered by facsimile or electronically with electronic signatures in lieu of an original signature, and the Parties agree to treat such signatures as original signatures and agree to be bound by this provision.
18. This Agreement shall be governed by and enforced in accordance with the laws of the State of Michigan.
19. This Agreement constitutes the entire agreement between the Parties and supersedes and cancels any other agreement between the Parties relating to the transactions contemplated in this Agreement. None of the previous and contemporaneous negotiations, preliminary drafts, or previous versions of this Agreement leading up to its execution and not set forth in this Agreement shall be used by any Party to construe or affect the validity of this Agreement. Each Party acknowledges that no representation, inducement, certification, warranty, or other condition not set forth in this Agreement has been made or relied upon by either Party.
20. All modifications to this Agreement and all waivers of any of the provisions of this Agreement, to be effective, shall be in writing and signed by both Parties.
21. The term of this Agreement shall be the shorter of until January 1, 2036, or as long as CTS is allowed to and does in fact maintain its facilities on poles described in attached project drawings. Upon expiration of this term, this Agreement will automatically renew for additional one (1) year periods, unless a Party has delivered to the other Party written notice to the contrary at least sixty (60) days prior to the end of the then-current Term. If this Agreement is terminated, CITY will have one (1) year to vacate co-lashed areas by either a.) establishing their own pole contacts on the same route and moving to these contacts, or b.) engineer an entirely new route. In addition, this Agreement shall terminate on the happening of any of the following events:
 - (a) If a Party defaults in the performance of any obligation imposed under this Agreement, and the default remains uncured by the defaulting Party for 10 days after the other Party has given a written notice of default, the non-defaulting Party shall have the right to terminate this Agreement.
 - (b) By mutual agreement of the Parties.
 - (c) If any warranty, representation, or certification made by either Party in this Agreement was false in any material respect when made or furnished.

CO-LASH AGREEMENT

- (d) Makes an assignment or any general arrangement for the benefit of creditors, or files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding under any bankruptcy law for the protection from creditors, or has a petition filed against it, or otherwise becomes bankrupt or insolvent (however evidenced), or is generally unable to pay its undisputed debts as they fall due,
- (e) The pole owner terminates the pole attachment agreement pursuant to the terms of CTS pole attachment agreement with the pole owner.
- (f) CTS permits to access and use the applicable public rights-of-way expire, are rescinded, or revoked, or otherwise no longer available to CTS for its use.

WHEREFORE, the Parties have executed this Agreement effective as of the date set forth below.

Climax Telephone dba CTS
Telecommunications, Inc.

Title:

Date:

Witness:

City of Kalamazoo

Title:

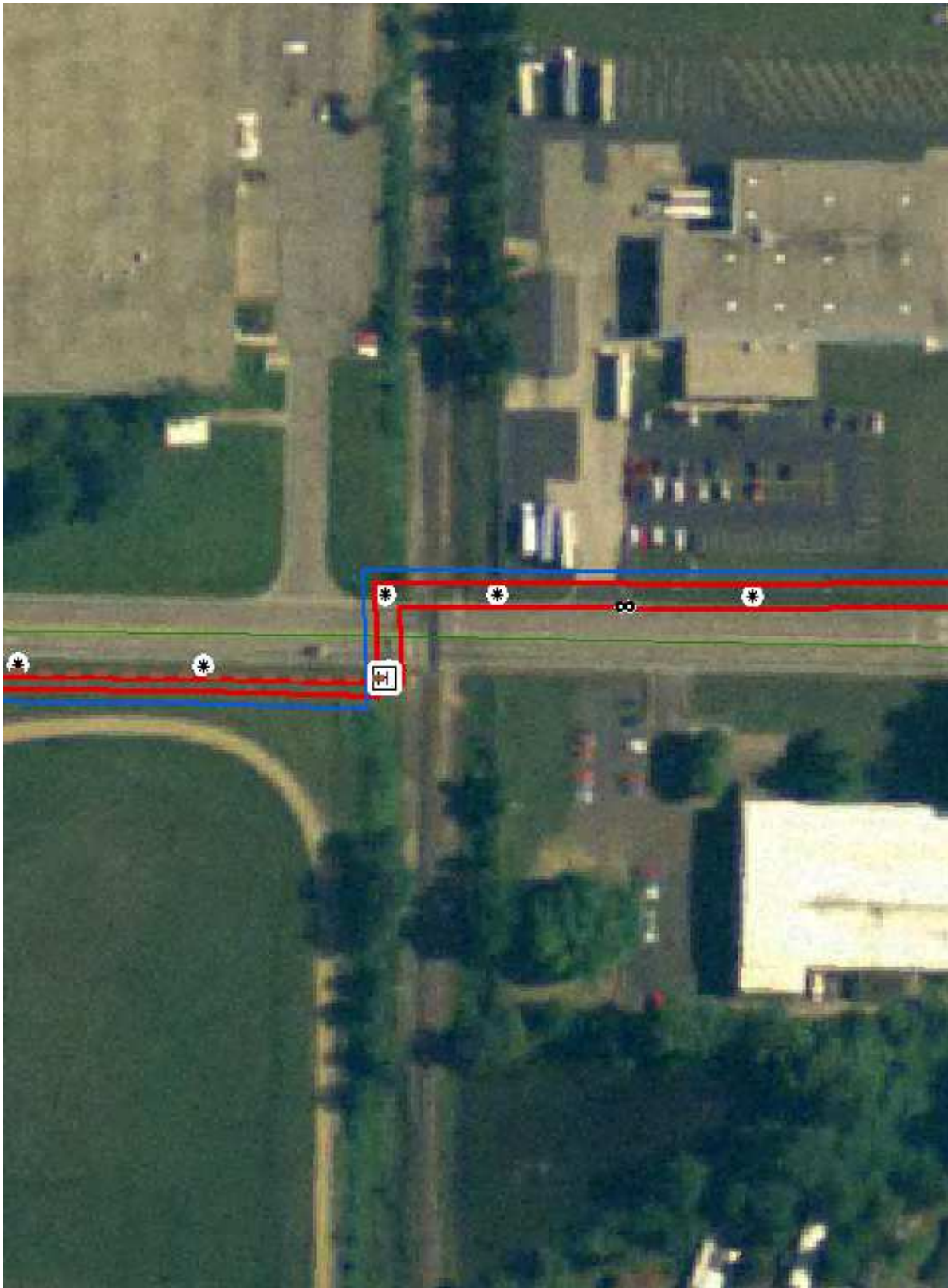
Date:

Witness:

CO-LASH AGREEMENT

CO-LASH AGREEMENT

Attachment A Co-Lash CTS over RR Tracks near 2605 Kilgore



CO-LASH AGREEMENT

Attachment B

Co-Lash CTS on Miller Rd Eastern RR track near Glendening



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Commission Agenda Report

City of Kalamazoo

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

FROM: Scott A. Borling, City Clerk

DATE: 6/20/2017

SUBJECT: Request for Special Permit

RECOMMENDATION

It is recommended that the City Commission approve a special permit for a pot bellied pig to be kept at 3008 Morgan Street, subject to compliance with applicable statutes, ordinances and health codes.

BACKGROUND

This request is being submitted to you pursuant to the provisions of Section 7-4 of the Code of Ordinances:

No person shall keep, upon any premises within the City limits, any swine whatever, without a special permit from the City Commission or its designee, which permit shall be granted only upon the written application of the person desiring the permit. Such application shall specify the location of the premises upon which the swine are proposed to be kept and the number desired to be kept. Such permit, if granted, shall state the location of the premises and the number of swine allowed to be kept, and it shall be unlawful to keep such swine upon any other premises or to keep any greater number than specified in the permit.

In the spring of 2017 the City Clerk's Office received information from a concerned neighbor that a pig was being kept at 3008 Morgan Street. Research into the situation showed that the City Commission had never issued a permit for a pig at this address, and there had been Public Safety contacts with the residents in February regarding the pig and again in June regarding animals in general. Following the June Public Safety contact the owner of the pig, Mr. Josh Garcia, submitted a request for a pig permit.

General Information

Bacon is a one-year-old pot bellied pig that is the size of a medium-sized dog. He is healthy, including up-to-date on his shots, and has had his tusks removed. Bacon is housebroken, crate trained, and litter trained. According to Mr. Garcia he gets along well with the other animals in the house and is loved by the entire family.

Potential Issues

Two issues have been raised by neighbors. First, a neighbor has indicated the property at 3008 Morgan frequently has junk and trash in the yard. At the request of the Clerk's Office a Code Compliance Officer investigated this concern and did not find any nuisance violations. Second, a neighbor has expressed concern about the number of animals being kept at the house. The Public Safety Officer who responded to this concern found three dogs, two cats, a parrot, and two geckos, in addition to the pig. The animals were not creating hygiene problems, and the officer did not find any nuisance violations. So the investigation of these concerns are considered closed.

Conclusion

No complaints have been made about the behavior or hygiene of the pig, and he appears to be in good health. Neighbors have expressed concerns about the pig, but those concerns have been about the pig's environment. Investigations into concerns about the pig's environment have resulted in no evidence of issues regarding the health, safety, and welfare of the animals or residents at the property. Although Mr. Garcia has owned a pig without a permit for some time, he is taking action to come into compliance with City ordinances. The recommendation is for the City Commission to approve the permit.

COMMUNITY RESOURCES CONSULTED

The City Clerk's office has spoken with one of Mr. Garcia's neighbors.

FISCAL IMPACT

There is no fiscal impact related to this request.

ALTERNATIVES

The City Commission could deny the request or approve the request with additional conditions. If the request is denied, Mr. Garcia will need to remove the pig from his home or face enforcement action.

ATTACHMENTS:

Type	Description
▣ Background Material	Bacon Photo
▣ Background Material	Yard Photo 1
▣ Background Material	Yard Photo 2









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: 6/20/2017

SUBJECT: Approval of the Mayor's Reappointment to the Downtown Development Authority

RECOMMENDATION

It is requested that the City Commission approve the Mayor's reappointment of Greg Taylor to the Downtown Development Authority for a term expiring on March 31, 2021.

BACKGROUND

City ordinance establishes that the Mayor appoints and reappoints members to Downtown Development Authority. I have reappointed Greg Taylor to the DDA, and I am now requesting City Commission approval of this reappointment as required by ordinance. If this reappointment is approved Mr. Taylor will be serving his second, consecutive full term and will be ineligible for reappointment in 2021.

COMMUNITY RESOURCES CONSULTED

None

FISCAL IMPACT

There is no fiscal impact directly associated with this reappointment.

ALTERNATIVES

The City Commission can approve the reappointment, not approve it, or postpone action to a date certain.



Commission Agenda Report

City of Kalamazoo

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

FROM: Scott A. Borling, City Clerk

DATE: 6/20/2017

SUBJECT: Appointment to the Parks and Recreation Advisory Board

RECOMMENDATION

It is recommended that the City Commission approve the appointment of Aliyah Adams to the Parks and Recreation Advisory Board as a youth representative for a term expiring on March 31, 2020.

BACKGROUND

The City Commission must approve appointments to the Parks and Recreation Advisory Board (PRAB). The City Clerk's Office receives applications for PRAB and forwards them to the staff liaison. It is then the responsibility of PRAB to recommend nominees for appointment to the City Commission. The attached *Appointee Nomination Report* details Ms. Adam's qualifications.

COMMUNITY RESOURCES CONSULTED

The Parks & Recreation Advisory Board voted unanimously to recommend the appointment of Ms. Adams.

FISCAL IMPACT

There is no fiscal impact associated with this appointment.

ALTERNATIVES

The City Commission could choose to approve this appointment, not approve it, or postpone action to a date certain.

ATTACHMENTS:

Type	Description
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☐	Report PRAB Nomination Report
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Advisory Boards and Commissions Appointee Nomination Report

City of Kalamazoo

RECOMMENDATION

The Parks and Recreation Advisory Board (PRAB) recommend that the City Commission approve the following appointment:

- The appointment of Aliyah Adams to fill a vacant position on the PRAB Board. Ms. Adam's term would expire June 2020.

SPECIAL REQUIREMENTS FOR THIS POSITION

The PRAB membership requires representatives be residents of the City of Kalamazoo.

SELECTION PROCESS

Applicants Considered

The City Clerk's Office has an application on file for PRAB. The Committee reviewed the application of Ms. Adams and she attended the June 6th, 2017 meeting.

Interview Process and Final Recommendation

PRAB conducted an interview with Ms. Adams at their regularly scheduled meeting on June 6th. Following the interview, the Board discussed the results of the interview and each of Ms. Adams' qualifications. The PRAB Board voted 6-0 to recommend Ms. Adams for appointment.

NOMINEE QUALIFICATIONS

Dual Board Memberships

Currently, Ms. Adams is not serving on another City Advisory Board.

Residency

Ms. Adams resides in the City of Kalamazoo in the Edison neighborhood.

Term Limits

This would be a three year term and Ms. Adams would be eligible to serve one more consecutive full term after this term expires.

Training, Experience, Education and Skills

Ms. Adams is an active volunteer in the community and expressed an interest in becoming more familiar with the Parks and Recreation Department. While she is young and has not participated in many parks volunteer opportunities, she would like to use this Board as a way to get more involved.

Contribution To Diversity

Ms. Adams lives in the Edison neighborhood. There is currently one youth member on PRAB, but he will be starting college in the fall and cannot commit to regularly attending meetings. The board has space for 2 youth (ages 15-17) representatives. Although Ms. Adams is currently 14, she will turn 15 in November.

NOMINATION RATIONALE

Ms. Adams expressed a strong desire to get involved in the community and has an interest in City parks. She has grown up in the area and is passionate about becoming more involved in her hometown. PRAB is in need of the youth perspective and the Board believes that her insight and contributions will be very beneficial to the Board, the Parks and Recreation Department, and the City of Kalamazoo.

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, Deputy City Clerk



Commission Agenda Report

City of Kalamazoo

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

FROM: Scott A. Borling, City Clerk

DATE: 6/20/2017

SUBJECT: Approval of Minutes

RECOMMENDATION

It is recommended that the City Commission approve the minutes from its meetings on June 19, 2017.

ATTACHMENTS:

Type	Description
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- | | |
|--------------------------|--|
| ☐ | Minutes June 19, 2017 Regular Neighborhood Meeting |
| ☐ | Minutes June 19, 2017 Business Meeting |

	A neighborhood meeting of the Kalamazoo City Commission was held on Monday, June 19, 2017 at 6:00 p.m. in the Community Room at City Hall, 241 W. South Street.
Roll Call	COMMISSIONERS PRESENT: Mayor Bobby J. Hopewell Vice Mayor Don Cooney David Anderson Erin Knott Shannon Sykes COMMISSIONERS ABSENT: Matt Milcarek Jack Urban Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.
Commissioners Excused	Commissioner Sykes, seconded by Commissioner Knott, moved to excuse the absences of Commissioners Milcarek and 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>Homecrest Circle Neighborhood Association</u> Christine Wilkins Peter Wilkins <u>Stuart Area Restoration Association</u> Max Tibbitts, Board Chair Valarie Bader, Vice Chair Dana Underwood, Secretary
Homecrest Circle Neighborhood Association	The Homecrest Circle Neighborhood Association representatives: - reported the neighborhood was growing, and after years of being dormant the Association was going to reconstitute itself with some meetings and events over the summer.
Stuart Area Restoration Association	The Stuart Area Restoration Association representatives: - reported the Association would be changing from a political organization to a social organization with an emphasis on incorporating new residents into the life of the City and the Association. - discussed the impact of short-term lodging (Air BnB) on the neighborhood, described how the Association had dealt with it, and stated regulation was needed to make this industry an economic benefit for the community rather than a nuisance.

- stated the Association had drafted a position paper and policy document on short term rental properties and indicated these documents were given to City staff first in August of 2016 and then again in November of 2016 and May of 2017. Ms. Underwood expressed frustration that the Planning Commission and Zoning Board of Appeals had recently considered cases dealing with short term rental properties and had made decisions that headed in the opposite direction from the Association's proposals and recommendations. Ms. Underwood noted the state had moved to start collecting sales taxes on revenue from short term rental properties, and the Association had reached out to Kalamazoo County regarding collection of the countywide accommodation tax. Ms. Underwood asked that the issue of regulating short term rental properties be prioritized above the creation of a medical marihuana facility ordinance.
- reported the Summer Youth Employment Program was going well.
- indicated the Association had sold several properties in the past few months.

In response to a question from Commissioner Anderson, City Attorney Robinson stated he had not seen the documents Ms. Underwood had submitted to City staff. City Attorney Robinson reported the City had been working through its lobbyists and the Michigan Municipal League to fight proposed state laws that would prohibit local units of government from regulating short term rental properties.

Ms. Underwood stated it was frustrating that City staff could not answer ZBA members' questions about short term rental properties when the documents the Association had provided addressed many of the issues that were raised.

In response to a question from Commissioner Sykes, Ms. Underwood stated she had sent the proposed ordinance and policy to many people in the City organization, including department directors and City Commissioners.

Commissioner Sykes suggested the City systematize a process for citizens to submit ideas for ordinances and policies.

When an opportunity was given for general citizen comments, the following people addressed the City Commission:

Asha Kashad, City resident, spoke about the problem of litter in the City and the need for trash cans in bus stops.

Jody Dozeman, city resident, spoke about putting privacy fences around cemeteries and expressed support for paying people who did not have homes or jobs to clean up litter.

Finally, an opportunity was given for miscellaneous comments by City Commissioners, but no comments were offered.

Stuart Area
Restoration
Association
(cont'd)

Citizen Comments

Commissioner
Comments

Adjournment

The meeting adjourned at 6:26 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on July 3, 2017

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: July 3, 2017

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	A regular meeting of the Kalamazoo City Commission was held on Monday, June 19, 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 Shannon Sykes COMMISSIONERS ABSENT: Matt Milcarek Jack Urban Also present were City Manager James Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.
Commissioners Excused	Commissioner Anderson, seconded by Commissioner Sykes, moved to excuse the absences of Commissioners Milcarek and Urban.
Invocation	The invocation, given by Vice Mayor Cooney, was followed by the Pledge of Allegiance.
Adoption of the Agenda	By unanimous consent the City Commission adopted its meeting agenda as presented.
Communications	City Manager Ritsema announced the City Commission would meet in special session on Monday, June 26, 2017 at 6:00 p.m. in the City Commission Chambers at City Hall. The topic of this work session would be medical marihuana facilities.
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 contract with Hubbell, Roth, & Clark, Inc. for design engineering of the West Michigan and Howard Street Traffic Signal Upgrade Project in the amount of \$144,700. - approval of a contract with Epic Excavating for the 2017 Streets Concrete Project in the amount of \$237,047.50. - approval of Contract No 17-5132 with the Michigan Department of Transportation for the Vine Street Improvement Project from Westnedge to Crosstown in the amount of \$690,300. - approval of Change Order No. 6 to the purchase order with PEL Construction, LLC for City Hall facilities maintenance and rehabilitation work in the amount of \$138,400.
Resolution 17-39	- adoption of a RESOLUTION authorizing the City Clerk to submit a grant agreement to the Michigan Department of State for the acquisition of new voting equipment and accepting this grant of equipment in the amount of \$178,234.

- authorization for the City Manager to execute a Letter of Agreement between Oshtemo Charter Township, Pfizer, and the City to extend the City's water system, consisting of a water main and pressure reducing station, to the area of West J Avenue, 2nd Street, Rosemary Lane and Josiane Drive in Oshtemo Township.
- approval of the write-off of \$31,308.37 of a \$140,000 Economic Initiative Fund loan made to BDSLM Enterprises, LLC by the City of Kalamazoo Economic Development Corporation.
- approval of a buy/sell agreement with Charlie Beach for the purchase of property located at 1015 East Alcott Street.
- approval of the minutes from the City Commission meetings on May 15, May 22, and June 5, 2017.

Commissioner Knott, seconded by Vice Mayor Cooney, 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.

AYES: Commissioners Anderson, Knott, Sykes, Vice Mayor Cooney, Mayor Hopewell

NAYS: None

Assistant City Manager Laura Lam and Community Planning and Development Director Rebekah Kik delivered a PowerPoint presentation entitled *Imagine Kalamazoo Draft Strategic Vision, June 19, 2017*. A copy of the presentation was filed with the papers for this meeting.

Mayor Hopewell requested that copies of the *Draft Strategic Vision* document be placed at the Kalamazoo Public Library.

In response to a question from Commissioner Anderson, Assistant City Manager Lam stated the PowerPoint presentation was a distillation of the strategic vision document, and people should relate their comments to that document, not the presentation.

Commissioner Sykes expressed excitement about Imagine Kalamazoo 2025 (IK2025) and stated residents would really benefit from implementation of the strategic vision.

Mayor Hopewell spoke about the importance of measuring success and connecting the results of the City's efforts to the vision and plans in IK2025. Mayor Hopewell encouraged staff to "brand" the City's IK2025 and Foundation for Excellence (FFE) projects.

Director Kik introduced Christina Anderson as the new City Planner.

Vice Mayor Cooney urged the City to prioritize IK2025 projects because people were starting from different levels of quality of life.

Consent Agenda
(cont'd)

Presentation re: the
Draft Imagine
Kalamazoo 2025
Strategic Vision and
Foundation for
Excellence

Presentation re: the
Draft Imagine
Kalamazoo 2025
Strategic Vision and
Foundation for
Excellence (cont'd)

City Attorney Robinson reviewed the events leading up to the FFE and reported he would be working with the lead donors' attorney in the next few days to finalize the FFE articles of incorporation and bylaws.

In response to a question from Commissioner Knott, City Attorney Robinson stated he hoped to have the FFE organizing documents available for City Commissioners in early July with consideration by the Commission occurring in late July or early August.

Mayor Hopewell remarked that he and City Attorney Robinson had been listening to the ideas and concerns about the FFE from citizens and Commissioners, and those ideas and concerns were being included in discussions about the organization of the FFE.

In response to a question from Commissioner Knott, City Attorney Robinson explained that filing the FFE articles of incorporation with the state would take 1-2 weeks, after which the IRS review process for the FFE's tax exempt status would take 90-120 days.

In response to questions from Commissioner Anderson, City Manager Ritsema stated the City's operating millage would be reduced to 12 mills, and tax bills would be mailed out at the end of the month. City Manager Ritsema indicated the bills would show the savings attributable to the FFE and would contain an insert with information on how people could make a contribution.

Mayor Hopewell noted City staff were working hard to leverage FFE dollars with grants and other funding sources.

Commissioner Sykes asked when Commissioners would receive the FFE organizing documents and noted the FFE document review would be some of the most important work done by this Commission.

In response to Commissioner Sykes, Mayor Hopewell indicated Commissioners could have the FFE documents as early as the next week.

City Manager's
Report

City Manager Ritsema thanked staff for their hard work on IK2025, and he provided the following reports and updates:

- Departmental Reports and Project Updates
- *Inside the City* newsletter, June 2017 edition
- May 2017 Purchases
- May 2017 Investments

Citizen Comments

When an opportunity was given for general citizen comments, the following people addressed the City Commission:

Nehemiah Scudder, City resident, suggested the City clean up the Kalamazoo River and litter on the Northside.

Jodi Dozeman, City resident, submitted written comments on various topics.

The following people indicated they had participated in IK2025 and commended the City for creating a successful community engagement process:

Bob Miller, City resident and Vice President for Community Relations at Western Michigan University
Ben Brown, City resident
Coty Dunten, City resident
Alfonso Espinosa, City resident

Pat Crowley, non-resident and the Kalamazoo County Drain Commissioner, spoke about the problem of “dumping” trash and junk near drainage areas, which had been exacerbated by the City moving to quarterly bulk trash pick-up. Ms. Crowley distributed invitations to the Peppermint Creek cleanup event on June 21st. A copy of the invitation was filed with the papers for this meeting.

Zachary Lassiter, City resident, suggested the City go back to monthly bulk trash pick-up. Mr. Lassiter suggested the City fix its crumbling streets and sidewalks before creating new bike lanes. Mr. Lassiter criticized the City Attorney’s opinion regarding the Open Meetings Act and small group meetings of Commissioners.

Frank Warren, City resident, remarked that Rx Optical was built on a dump and announced the next Honor Flight would take place in September.

Next, an opportunity was given for miscellaneous comments and concerns of City Commissioners.

Commissioner Sykes stated she was very proud of the City’s work on IK2025, and she asked if there had been any thought or feedback regarding quarterly bulk trash pick-up.

In response to Commissioner Sykes, City Manager Ritsema indicated the Public Services Director was looking at how Solid Waste funds were expended, and this consideration could include revisiting the frequency of bulk trash pick-up.

Vice Mayor Cooney noted the U.S. House of Representatives had passed a bill eliminate healthcare away for 40,000 people in the 6th Congressional District. Vice Mayor Cooney invited people to participate in a March to Save Healthcare on Wednesday, June 28th at Bronson Park.

Commissioner Knott expressed hope that City would do more milling and resurfacing of roads. Commissioner Knott encouraged staff to align the City’s approach to bulk trash pick-up with its Climate Action Plan.

Mayor Hopewell cautioned people against “tagging” specific neighborhoods as blighted or problematic. Mayor Hopewell stated the City Commission had made a commitment to the Complete Streets concept in a transparent process, and this meant a commitment to bike lanes and mobility for all people. Mayor Hopewell thanked people for reaching out to him following the death of his sister.

Citizen Comments
(cont’d)

City Commissioner
Comments

City Commissioner
Comments (cont'd)

In response to a question from Mayor Hopewell, Director Kik reported Portage Street had been milled and resurfaced after being on the street project list for five years, and citizens had requested the new street be restriped to include bike lanes. Director Kik indicated the request was being considered by the Planning Commission.

Closed Session

Vice Mayor Cooney, seconded by Commissioner Anderson, moved that the City Commission go into closed session to discuss pending litigation.

Prior to a vote on the motion, Mayor Hopewell announced the Commission would not be returning to open session.

With a roll call vote this motion passed.

AYES: Commissioners Anderson, Knott, Sykes, Vice Mayor Cooney, Mayor Hopewell

NAYS: None

Adjournment

The meeting adjourned at 8:43 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on July 3, 2017

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: July 3, 2017

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