Agenda
Regular Meeting of the City Commission

City of Kalamazoo

Monday, July 1, 2019 7:00 PM

City Commission Chambers at City Hall - 241 W. South Street

A. CALL TO ORDER/ROLL CALL

B. OPENING CEREMONY

1. Invocation: Pastor Chuck Moerdyk, North Presbyterian Church
2. Pledge of Allegiance
3. Introduction of Guests
4. Proclamations
    a. Summer Learning Day

C. ADOPTION OF FORMAL AGENDA

D. COMMUNICATIONS

1. Calendar of Upcoming Meetings

E. PUBLIC HEARINGS

F. CONSENT AGENDA

(Action: Motion to approve Items "1-9" and authorize the City Manager to sign all documents on behalf of the City)

1. Approval of a contract with Tetra Tech, Inc., who is a prequalified firm, for the Phosphate Upgrades Project in the amount of $971,500.

2. Approval of a contract with Pajay, Inc. for the 30th Street Water Main Project, in the amount of $920,180.

3. Approval of a 5-year term contract with UniFirst Corporation for industrial uniform rental and cleaning services for the Department of Public Services in the amount of $200,000.

4. Approval of a contract with Consumers Energy for installation of a generator at 4216 Lakeside Dr. for the Whites Lake Sanitary Station, in the amount of $104,602.70.

5. Approval of a contract with Consumers Energy for installation of a generator at 2830 Oakland Dr. for the Woods Lake Sanitary Lift Station in the amount of $127,479.26.

6. First reading of an ordinance amending Chapter 20B addressing commercial medical marihuana facilities so as to reflect recent changes in State law and regulatory rules governing those facilities and extend the term of provisional certificates issued by the City.

7. Adoption of a RESOLUTION designating financial institutions as approved depositories for the City and authorizing the positions of Management Services Director/CFO, City Treasurer, and the Assistant City Treasurer to execute and sign agreements to procure various cash management services of financial institutions and to provide specific operational and procedural information to such institutions as may be required.

8. Adoption of a RESOLUTION to enter into an Interlocal Agreement with the Michigan Cooperative Liquid Assets Securities System (CLASS).

9. Adoption of a RESOLUTION to approve a Brownfield Plan Redevelopment and Purchase Agreement for the approximate southerly 6-acre portion of Davis Creek Business Park to Davis Creek Land Development Co., LLC.

G. REGULAR AGENDA

1. Adoption of an ORDINANCE authorizing the issuance of Water Supply System Junior Lein Revenue Bonds, Series 2019B for an amount not to exceed $1,730,000; and adoption of a Notice of Sale RESOLUTION. **(Action: Motion to adopt the ordinance and resolution)**

H. REPORTS AND LEGISLATION

1. City Manager's Report
2. City Clerk's Report

I. UNFINISHED BUSINESS

J. POLICY ITEMS

1. Adoption of a revised Investment Policy, which sets forth the City's investment guidelines and priorities. **(Action: Motion to adopt the policy)**

K. NEW BUSINESS

L. CITIZEN COMMENTS

M. MISCELLANEOUS COMMENTS 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 Knott, and City Commissioners

FROM: Scott A. Borling, City Clerk

PREPARED BY: Shelby Moss, Deputy City Clerk

DATE: 6/11/2019

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	Calendar of Upcoming 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 15th and August 5th

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

July 15th

Advisory Boards, Commissions and Committees (next two weeks)

The **Parks and Recreation Advisory Board** will meet on Tuesday, July 2, 2019 at 5:30 p.m., at Milham Park, located at 774 E. Kilgore Road.

The **Tree Committee** will meet on Tuesday, July 2, 2012 at 2:00 p.m., in the Public Services Conference Room, located at 415 Stockbridge Avenue.

The **Natural Features Protection Review Board** will meet on Tuesday, July 9, 2019 at 4:00 p.m. in the Community Room at City Hall.

The **Citizen-Public Safety Review and Appeals Board** will meet on Tuesday, July 9, 2019 at 6:00 p.m. at Public Safety Headquarters, located at 150 E. Crosstown Parkway.

The **Kalamazoo Historic Preservation Commission** will meet on Tuesday, July 9, 2019 at 6:00 p.m., in the Community Room at City Hall.

CANCELLED ~~The **Planning Commission** will meet on Tuesday, July 9, 2019 at 7:00 p.m., in the Commission Chambers at City Hall.~~

The **Traffic Board** will meet on Thursday, July 11, 2019 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, 2019 at 6:30 p.m., in the Community Room at City Hall.

The **Zoning Board of Appeals** will meet on Thursday, July 11, 2019 at 7:00 p.m., in the Commission Chambers at City Hall.

The **Downtown Development Authority Board** will meet on Monday, July 15, 2019 at 3:00 p.m., in the Community Room at City Hall. The **Downtown Economic Growth Authority Board** will meet immediately following.

Commission Agenda Report
City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, 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: Anna C. Crandall, EIT, Senior Civil Engineer – Water Resources

DATE: 6/13/2019

SUBJECT: Approval of a Contract with Tetra Tech, Inc. for the Phosphate Upgrades Project

RECOMMENDATION

It is recommended that the City Commission approve a contract with Tetra Tech, Inc. for the Phosphate Upgrades Project, in the amount of $971,500.00.

BACKGROUND

Currently, the City of Kalamazoo uses sodium hexametaphosphate for iron sequestration and corrosion control in the drinking water system. In 2017, Tetra Tech, Inc. completed a Desktop Corrosion Control Chemical Analysis which recommends a blend of orthophosphate and polyphosphate for all 16 pump stations in the City of Kalamazoo's drinking water system. During the connection of the City of Parchment's water system to the City of Kalamazoo's water system, the Michigan Department of Environment, Great Lakes, & Energy (formerly Michigan Department of Environmental Quality) recommended that all three of the City of Kalamazoo pump stations that would feed City of Parchment water system switch to the blend of orthophosphate and polyphosphate as detailed in the Desktop Corrosion Control Chemical Analysis. Those three stations have successfully switched over to the blend of orthophosphate and polyphosphate, but further instrumentation and electrical controls upgrades are needed.

It was decided to move forward with implementing the Desktop Corrosion Control Chemical Analysis by having all 16 Pump Stations upgraded to have the City of Kalamazoo's drinking water system corrosion control fully optimized by 2021. This project will upgrade the phosphate storage, chemical pumps, and antiquated instrumentation and electrical controls at 15 pump stations. Station 5 is not included in this project because the design of a full reconstruction of the station began in 2018 and is ongoing. Construction of this project will be split into two bid packages to be complete and fully operational by 2021.

Public Services – Water Resources Division reached out to Tetra Tech, Inc. to provide a quote for professional services related to the design, bidding, construction administration, programming, and startup services for the Phosphates Upgrades Project. Tetra Tech, Inc. provided a quote for $971,500 for the requested work. Tetra Tech, Inc. is uniquely qualified since they completed the Desktop Corrosion Control Chemical Analysis. Tetra Tech, Inc. has performed well with other projects for the City of Kalamazoo, and Water Resources Engineering recommends approval of this contract.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

The funding for the project is available in the City's 2019 Water Capital Improvement Budgets. Project funding and estimated costs are as follows:

Funding:		
	wat0200077	$971,500.00
		$971,500.00
Costs:		
	Design, Bidding, Construction Administration,	$971,500.00
	Programming, & Startup Services	**$971,500.00**

ALTERNATIVES

The City could choose to use City staff to perform the required work, however this is not recommended as City staff is busy with other projects.

ATTACHMENTS:

Type	Description
Proposal	Tetra Tech Project Proposal

June 3, 2019

Transmitted Electronically

Ms. Anna Crandall, EIT
Senior Civil Engineer
Water Resources Division
City of Kalamazoo
415 Stockbridge Avenue
Kalamazoo, MI 49001

Re: City of Kalamazoo Michigan
Pump Stations Phosphate and Electrical & Instrumentation Upgrades
Proposal for Basis of Design, Design, Bidding, Construction Administration, Programming, and Startup Services

Dear Ms. Crandall:

Thank you for the opportunity to submit our professional services proposal to assist the City of Kalamazoo (OWNER) with upgrading the Phosphate and Electrical & Instrumentation systems at several pump stations.

Based on our May 2 and 30, 2019 discussions with you and Kalamazoo water infrastructure staff, certain existing station control equipment and related components have served their useful life and need to be replaced. Under this contract, Tetra Tech (ENGINEER) will prepare a Basis of Design that will evaluate the following pump stations chemical feed and storage requirements as well as necessary electrical & instrumentation upgrades. Based on the evaluations, ENGINEER will provide process, structural, civil mechanical, electrical and instrumentation design drawings and specifications for each pump station. As noted in the table below, each pump station will be included in one of two construction bidding documents:

Station	Pressure District	Bid Package A	Bid Package B	Probable Chemical Storage (Bulk or Crock)	May Need Building Expansion
1	Low		X	Bulk	
2	Low		X	Crock	
3&7	Low		X	Bulk	
4	Low/High	X		Bulk	
8	High	X		Crock	X
9	High	X		Bulk	
11	High/Northwest High	X		Bulk	
12	High	X		Crock	X
14	Intermediate		X	Crock	
17	High	X		Crock	X
18	High	X		Crock	
22	Super High		X	Bulk	X
24	Super High		X	Bulk	
25	East Side High		X	Bulk	
39	High	X		Bulk	
Total stations in each bid package		**8**	**7**		

Tetra Tech
710 Avis Drive, Ann Arbor, MI 48108
Tel 734.665.6000 Fax 734.213.3003 www.tetratech.com

In addition to basis of design and design efforts, ENGINEER will also provide bidding, construction administration, programming, and startup services for each of the two bid packages.

SCOPE OF SERVICES

TASK 1 – BASIS OF DESIGN (BOD)– ALL PUMP STATIONS

- ENGINEER will request background data and drawings on each subject pump station not already provided. This request will also include any changes, proposed by the City, to the March 2017 Desktop Corrosion Chemical Analysis prepared by Tetra Tech. For example, is the City aware of any changes in water chemistry from our report or has there been a change in compliance status.
- ENGINEER will review the use of a single phosphate corrosion inhibitor blend at all stations versus the recommendations in the 2017 analysis and make recommendations for dosage of the singular product or use of alternate products at some locations.
- ENGINEER will lead a kick-off meeting with City staff to review the Scope of Services.
- ENGINEER will prepare a draft Basis of Design for upgrading the phosphate and electrical and instrumentation elements for each pump station. The Basis of Design will include design calculations to size the proposed liquid phosphate chemical storage and feed facilities and include them in a design memorandum that summarizes the sizing of the equipment, proposed placement of the equipment and the proposed instrumentation and controls for the system. Memorandum will serve as the basis of design to be submitted with the Michigan Department of Environment, Great Lakes and Energy (EGLE) Permit Application for Water Supply Systems. A draft will be submitted for the City's review and a revised memorandum will be prepared after receipt of the City's comments. The Basis of Design will include elements such as:
    - Chemical blend and suppliers
    - Chemical distribution strategy
    - Chemical storage tank sizing for each station
    - Chemical feed pump sizing for each station
    - Adequacy of existing structures for proposed changes
    - Operational impacts
    - Typical process and instrumentation diagram
    - Chemical room layout
    - Electrical and instrumentation requirements
    - Blended phosphate dosing
    - Conceptual opinion of probable cost

TASK 2: BID PACKAGE A

Task 2.1 – Design

- ENGINEER shall develop design drawings including the following potential elements:
    - Electrical background plans
    - Mechanical background plan
    - Detailed wiring diagrams
    - Key sheet
    - Site plan

- Power one-line
- Electrical panel layout
- PLC input/output layout. HART I/O will be used for all analog input signals.
- Equipment BOM for Rockwell components
- Phosphate bulk storage and containment system
- Phosphate day tank and metering pumps

- ENGINEER shall conduct two (2) design review meetings at approximately the 50% and 90% design stage.
- ENGINEER shall develop appropriate technical specifications.
- ENGINEER shall deliver the completed drawings in electronic PDF and AutoCAD formats.
- ENGINEER shall deliver to OWNER a final design drawing package, including specifications, that includes upgrades at the pump stations included in the bid package.
- ENGINEER will assist OWNER with the preparation and submission of the EGLE Permit Application for Water Supply Systems and will assist the OWNER with responses to any requests for additional information following submittal of the application.

Task 2.2 – Bidding:

- ENGINEER shall:
    - Assist OWNER in preparing front-end contract documents. We have budgeted a total of 16 hours for this task.
    - Provide one (1) copy of the Contract Documents (engineering drawings and specifications) and any addenda, which may be issued to bidding service agencies, such as Dodge Reports. Additional sets required for bidding will be sold to bidders or others for a nominal fee approximately equal to the cost of printing and handling.
    - Conduct one (1) pre-bid meeting, maximum of one (1) day at OWNER'S office.
    - Respond to questions and prepare and issue addenda as required to interpret, clarify or expand the bidding documents.
    - Review and evaluate the apparent low bidder's qualifications for undertaking the work.
    - Consult with and advise the City as to the acceptability of subcontractors and other persons and organization proposed by the prime contractor (CONTRACTOR) of those portions of the work as such acceptability is required by the bidding documents.
    - Assist OWNER in evaluating bids and make recommendation of the award of the contract
    - Assist OWNER in obtaining the insurance, performance bond and payment bond certificates and other such submittal items required from CONTRACTOR by the contract documents so that construction of the project can commence.

Task 2.3 – Construction Administration

- ENGINEER shall administer the CONTRACTOR's contract for this project.
- ENGINEER shall conduct one (1) pre-construction meeting at OWNER'S facility.
- ENGINEER shall provide shop drawing reviews.

- ENGINEER shall observe the construction site during three site visits (on average), per pump station, to evaluate construction progress and answer CONTRACTOR questions.
- ENGINEER shall modify the drawings to conform to construction records at the conclusion of the project.

Task 2.4 – Programming

- ENGINEER shall convert each of the existing stations programmable logic to Rockwell Logix 5000 based. The logic conversion includes standardizing the existing station control logic. In addition, the existing units of measure will be standardized on imperial engineering units.
- ENGINEER shall work with the OWNER to remove the obsoleted control logic code that is no longer in use within the PLC and coordinate standardization across the facilities included in this project.
- ENGINEER shall program automatic Phosphate chemical control logic to flow pace the new chemical pumps and monitor levels in the bulk and day tanks at each station.
- ENGINEER shall configure the Wonderware HMI and Historian database to incorporate the modified tag structure of each station PLC along with the new chemical system components.
- ENGINEER shall configure the existing Wonderware Historian to incorporate the new chemical feed analog signals.
- ENGINEER shall modify the existing Historian tag-names to allow communication to the new Logix 5000 tag structure for each station.

Task 2.5 – Startup Services

- ENGINEER will provide electrical startup to assist the contractor and software programmer with station startup during four (4) 1-day site visits (on average) per pump station.
- ENGINEER will provide two programmers for onsite startup of software at the station and the Kalamazoo Water Reclamation Plant (KWRP) during four (4) 1-day site visits (on average) per pump station.
- ENGINEER will provide mechanical system startup to assist the contractor with station startup of the phosphate feed system, check metering pumps for proper operation and calibration, check automatic controls and alarms during a one (1) 1-day site visit (on average) per pump station.
- Provide Operation and Maintenance (O&M) training for OWNER'S personnel on updated system. Tetra Tech will provide one (1) electrical engineer for 2-hours of onsite training (on average) to occur during startup per pump station.
- ENGINEER shall provide one 1-day follow-up visit (on average) to correct problems that may occur after initial startup, per pump station, and to answer OWNER questions.
- ENGINEER shall prepare a Standard Operating Procedures (SOP) manual for each pump station included in this bid package. One (1) hardcopy of each pump station's SOP manual will be prepared for use at the pump station. One (1) hardcopy of each pump station's SOP manual will be prepared for use at the KWRP. A digital Word file of each pump station's SOP manual will be prepared.

Total Onsite Time for Startup Services, per Pump Station (on average) — *Four engineers (one electrical engineer, one mechanical engineer and two programmers), assume 32-hours for electrical engineer, 8-hours mechanical engineer and 64-hours total for programmers (32-hours per programmer) at OWNER'S site to complete Startup Services.*

Note: *We have also included time for one engineer to make a post-construction follow-up visit consisting of 1 trip to OWNER'S site for up to 1 full day (on average) to finish any remaining work following commissioning of software, per pump station.*

TASK 3: BID PACKAGE B

Task 3.1 – Design

- ENGINEER shall develop design drawings including the following potential elements:
  - Electrical background plans
  - Mechanical background plan
  - Detailed wiring diagrams
  - Site plan
  - Power one-line
  - Electrical panel layout
  - PLC input/output layout. HART I/O will be used for all analog input signals.
  - Equipment BOM for Rockwell components
  - Phosphate bulk storage and containment system
  - Phosphate day tank and metering pumps
- ENGINEER shall conduct two (2) design review meetings at approximately the 50% and 90% design stage.
- ENGINEER shall develop appropriate technical specifications.
- ENGINEER shall deliver the completed drawings in electronic PDF and AutoCAD formats.
- ENGINEER shall deliver to OWNER a final design drawing package, including specifications, that includes upgrades at the pump stations included in the bid package.
- ENGINEER will assist OWNER with the preparation and submission of the EGLE Permit Application for Water Supply Systems and will assist the OWNER with responses to any requests for additional information following submittal of the application.

Task 3.2 – Bidding:

- ENGINEER shall:
  - Assist OWNER in preparing front-end contract documents. We have budgeted a total of 16 hours for this task.
  - Provide one (1) copy of the Contract Documents (engineering drawings and specifications) and any addenda, which may be issued to bidding service agencies, such as Dodge Reports. Additional sets required for bidding will be sold to bidders or others for a nominal fee approximately equal to the cost of printing and handling.
  - Conduct one (1) pre-bid meeting, maximum of one (1) day at OWNER'S office.

- Respond to questions and prepare and issue addenda as required to interpret, clarify or expand the bidding documents.
- Review and evaluate the apparent low bidder's qualifications for undertaking the work.
- Consult with and advise the City as to the acceptability of subcontractors and other persons and organization proposed by the prime contractor (CONTRACTOR) of those portions of the work as such acceptability is required by the bidding documents.
- Assist OWNER in evaluating bids and make recommendation of the award of the contract.
- Assist OWNER in obtaining the insurance, performance bond and payment bond certificates and other such submittal items required from CONTRACTOR by the contract documents so that construction of the project can commence.

Task 3.3 – Construction Administration

- ENGINEER shall administer the CONTRACTOR’s contract for this project.
- ENGINEER shall conduct one (1) pre-construction meeting at OWNER’S facility.
- ENGINEER shall provide shop drawing reviews.
- ENGINEER shall observe the construction site during three site visits (on average), per pump station, to evaluate construction progress and answer CONTRACTOR questions.
- ENGINEER shall modify the drawings to conform to construction records at the conclusion of the project.

Task 3.4 – Programming

- ENGINEER shall convert each of the existing stations programmable logic to Rockwell Logix 5000 based. The logic conversion includes standardizing the existing station control logic. In addition, the existing units of measure will be standardized on imperial engineering units.
- ENGINEER shall work with the OWNER to remove the obsoleted control logic code that is no longer in use within the PLC and coordinate standardization across the facilities included in this project
- ENGINEER shall program automatic Phosphate chemical control logic to flow pace the new chemical pumps and monitor levels in the bulk and day tanks at each station.
- ENGINEER shall configure the Wonderware HMI and Historian database to incorporate the modified tag structure of each station PLC.
- ENGINEER shall configure the existing Wonderware Historian to incorporate the new chemical feed analog signals.
- ENGINEER shall modify the existing Historian tag-names to allow communication to the new Logix 5000 tag structure for each station.

Task 3.5 – Startup Services

- ENGINEER will provide electrical startup to assist the contractor and software programmer with station startup during four (4) 1-day site visits (on average) per pump station.

- ENGINEER will provide two programmers for onsite startup of software at the station and the Kalamazoo Water Reclamation Plant (KWRP) during four (4) 1-day site visits (on average) per pump station.
- ENGINEER will provide mechanical system startup to assist the contractor with station startup of the phosphate feed system, check metering pumps for proper operation and calibration, check automatic controls and alarms during a one (1) 1-day site visit (on average) per pump station.
- Provide Operation and Maintenance (O&M) training for OWNER'S personnel on updated system. Tetra Tech will provide one (1) electrical engineer for 2-hours of onsite training (on average) to occur during startup per pump station.
- ENGINEER shall provide one 1-day follow-up visit (on average) to correct problems that may occur after initial startup, per pump station, and to answer OWNER questions.
- ENGINEER shall prepare a Standard Operating Procedures (SOP) manual for each pump station included in this bid package. One (1) hardcopy of each pump station's SOP manual will be prepared for use at the pump station. One (1) hardcopy of each pump station's SOP manual will be prepared for use at the KWRP. A digital Word file of each pump station's SOP manual will be prepared.

Total Onsite Time for Startup Services, per Pump Station (on average) *— Four engineers (one electrical engineer, one mechanical engineer and two programmers), assume 32-hours for electrical engineer, 8-hours mechanical engineer and 64-hours total for programmers (32-hours per programmer) at OWNER'S site to complete Startup Services.*

Note: *We have also included time for one engineer to make a post-construction follow-up visit consisting of 1 trip to OWNER'S site for up to 1 full day (on average) to finish any remaining work following commissioning of software, per pump station.*

DELIVERABLES

- Basis of Design for Bid Packages A and B.
- Design drawings and technical specifications, per bid package, as stated above.
- Onsite construction phase engineering, per bid package, as stated above.
- Onsite startup phase engineering, per bid package, as stated above.
- Completed PLC and HMI applications, per bid package, turned over to OWNER at completion of project.
- Conforming to construction records drawings for each pump station included in each Bid Package.
- SOP manual for each pump station included in each Bid Package consisting of two (2) hardcopies and a digital Word file.

ASSUMPTIONS

- Site piping and tie in location: Chemical will be injected in the same location as the existing product.

- Per OWNER'S request, the same chemical blend will be used at each pump station based on ENGINEER'S recommendation of the optimal blend and feed rates. If this approach is not feasible then ENGINEER will so advise the OWNER.
- OWNER will provide CADD drawings or PDF's of the existing improvements at each pump station.
- OWNER will provide complete product data information for the liquid phosphate corrosion inhibitor product currently in use.
- OWNER will utilize Rockwell migration wiring kits to leverage the existing input/output (I/O) wiring for station No. 1 and No. 9.
- OWNER will provide typical front-end contract documents to be incorporated into the overall project front-end specifications per bid package.
- PLC programming to maintain the basic control theory at each remote station.
- An unmodified logic conversion of the existing Rockwell controllers and similar conversion of existing GE processors will be completed by Tetra Tech programmers.
- Each SOP manual will be limited to each upgraded chemical feed system.

COMPENSATION

Compensation for the professional services for this project will be based on time and materials at a not to exceed fee of $971,500 as detailed below. We will not exceed the total fee without written authorization from the City.

NOTE: This fee assumes that the City will authorize Tetra Tech to complete all three tasks. Because the scope for tasks two and three is based on average hours spent per pump station the actual fees for tasks two and three may be different than the proposed fees given below. However, the total fee will not change.

Task	Item	Sub-Tasks	Total of Tasks 1, 2 and 3
1	**Basis of Design**		**$36,900**
2	**Bid Package A (Based on Average Effort per Pump Station):**		
2.1	Design	$125,200	
2.2	Bidding	$7,400	
2.3	Construction Administration	$65,900	
2.4	Programming	$84,900	
2.5	Startup Services	$209,200	
	Subtotal, Bid Package A		**$492,600**
3	**Bid Package B (Based on Average Effort per Pump Station):**		
3.1	Design	$119,900	
3.2	Bidding	$7,400	

Task	Item	Sub-Tasks	Total of Tasks 1, 2 and 3
3.3	Construction Administration	$60,800	
3.4	Programming	$67,900	
3.5	Startup Services	$186,000	
	Subtotal, Bid Package B		**$442,000**
	Total Fee		**$971,500**

If you concur with our proposal, please sign in the space provided below and return one original signed copy of this proposal to indicate your authorization to proceed. The agreement for this project is comprised of this proposal and the attached Standard Terms and Conditions.

SCHEDULE

We are prepared to begin work within 2-weeks of your written authorization to proceed.

CONCLUSION

We look forward to working with you on this important project. If you need additional information, please call Mick Jones at (734) 213-5075.

Sincerely,

Mick S. Jones

Vic Cooperwasser

Mick S. Jones, P.E.
Senior Project Manager

Vic Cooperwasser, P.E.
Senior Project Manager

Encl.: Standard Terms and Conditions

PROPOSAL ACCEPTED BY: ____

TITLE: ____ **DATE:** _________________

Tetra Tech, Inc.
Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

<u>Worker's Compensation</u> – as required by applicable state statute
<u>Commercial General Liability</u> - $1,000,000 per occurrence for bodily injury, including death and property damage, and $2,000,000 in the aggregate
<u>Automobile Liability</u> –$1,000,000 combined single limit for bodily injury and property damage
<u>Professional Liability (E&O)</u> - $1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices, together with all costs arising out of such termination, within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate applicable laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Limitation of Liability In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed $50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Lien Rights Consultant may file a lien against the Client's property in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by Consultant are considered property improvements and the Client waives the right to any legal defense to the contrary.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

Commission Agenda Report
City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, 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: Anna C. Crandall, EIT, Senior Civil Engineer – Water Resources

DATE: 6/20/2019

SUBJECT: Approval of a Contract with Pajay, Inc. for the 30th Street Water Main Project Bid Ref. 90900-002.0

RECOMMENDATION

It is recommended that the City Commission approve a contract with Pajay, Inc. for the 30th Street Water Main Project, in the amount of $920,180.00.

BACKGROUND

The City of Kalamazoo identified the 30th Street Water Main Project as a priority for the 2019 construction season. Currently, the northern portion of the water system in Richland Township experiences pressure fluctuations due to a lack of transmission water main looping. This project will create a loop by connecting 12-inch transmission main from D Avenue to an existing dead end main on M-89 in Richland Township. This project will help stabilize the system pressure and allow for continued development in the area.

Bids were opened for the project on June 20, 2019. Four bids were received with B & L Excavating, LLC being the low bidder; however, their bid has been deemed non-responsive because their experience does not meet the requirements of the City's Standard Specifications. Therefore, Pajay, Inc. was the low responsive bidder. Public Services recommends the approval of this contract.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

The funding for the project is available in the City's 2019 Water Capital Improvement Budgets. Project funding and estimated costs are as follows:

Funding:		
	Wat0500307	$920,180.00
		$920,180.00

Costs:		
	Construction	$920,180.00
		$920,180.00

ALTERNATIVES

The City could choose to not award this work. That is not recommended as this water main project is needed to stabilize the pressure in the area.

ATTACHMENTS:

	Type	Description
🗋	Aerial Photo	Bid Results Summary

BID RESULTS SUMMARY

PROJECT: 30th Street Water Main Project

DATE: June 28, 2019

BIDDERS SOLICITED: 134

BIDDERS RESPONDED: 4

MBE/WBE BIDS SOLICITED: 18

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 90900-002.0

MBE/WBE AWARDED: No

ISSUE DATE: May 24, 2019

BID OPENING: June 20, 2019

APPROVAL REQUIRED: City Commission

FUNDED BY: CIP

BIDDERS	AMOUNT BID	LOCATION
*B & L Excavating	[1]$672,167.00 [2]$646,167.00	Wayland, MI
Payjay, Inc.	[1]$920,180.00 [2]$890,280.00	New Buffalo, MI
Dunigan Bros., Inc.	[1]$1,044,189.30 [2]$1,036,003.30	Jackson, MI
Hoffman Bros., Inc	[1]$1,052,186.70 [2]$1,052,186.70	Kalamazoo, MI

[1]WITH Prevailing Wages Bid
[2]WITHOUT Prevailing Wages Bid
*Non-Responsive Bid (Bidder could not provide required references)

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 Knott, 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: Brianna Clawson, Support Services Division Manager

DATE: 6/4/2019

SUBJECT: Contract for Uniform Rental and Cleaning Services Bid Ref# 98386-006.0

RECOMMENDATION

It is recommended that City Commission approve a 5-year term contract for industrial uniform rental and cleaning services with UniFirst Corporation in the amount of $200,000 for staff use within the Department of Public Services.

BACKGROUND

Presently, the staff at the Department of Public Services is provided with uniforms for health and safety reasons as well as per contractual agreement with Union employees. Continental Linen Services is currently providing the service on a month-to-month contract extension through September 30, 2019.

This contract is available through Sourcewell/NJPA, a purchasing cooperative, for the contract period July 1, 2019 – June 30, 2024.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

Funds for this contract were budgeted in the 2019 fiscal year departmental budgets for Public Services.

ALTERNATIVES

Several alternatives have been investigated that would alleviate use of rental uniforms. One alternative would be to replace the existing uniform contract with an annual clothing allowance for staff using uniforms in the performance of their job duties. Such an allowance would need to provide for both purchase and cleaning of clothing. A budgetary analysis has shown that this method would be much more costly to the City than provision and cleaning of uniforms by an outside contractor.

A second alternative is to have the City purchase and clean uniforms in-house. Upon analysis, this also proved to be more costly and more City staff intensive than an outside contractor providing this same service.

Commission Agenda Report
City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, 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: Tom Koporetz, Process Control Supervisor

DATE: 6/18/2019

SUBJECT: Whites Lake Sanitary Lift Station Emergency Generator Bid Ref # 00000-019.67

RECOMMENDATION

It is recommended the City Commission approve a contract with Consumers Energy of One Energy Plaza, Jackson MI, 49201 for installation of generator located at the 4216 Lakeside Dr., in the amount of $104,602.70.

BACKGROUND

This is a sole source purchase and installation from Consumers Energy. The City of Kalamazoo owns and operates a sanitary sewage lift station at 4216 Lakeside Dr. Currently lift station emergency power is supplied by a diesel powered portable generator that wastewater route personnel take to the site to restore power. This is a critical lift station and an automatic emergency generator will improve reliability.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

FY 2019 CIP Wwr 0100205 ………………………..…...…………$24,602.70
O/M 590-640-00-000-975.000………………………..…...………$80,000.00

Total Funding $104,602.70

Expenses

Generator and appurtenances……..……….……...……...……$93,950.00
Secondary Charge for Distribution……..…..………..……..……… $ 9,952.70
Gas Service Installation (Estimate) ...……….…..…….……..……….$ 700.00

$104,602.70

ALTERNATIVES

Although not recommended at this time, the City could choose to continue using the portable generators for emergency power.

Commission Agenda Report
City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Knott, 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: Tom Koporetz, Process Control Supervisor

DATE: 6/18/2019

SUBJECT: Woods Lake Sanitary Lift Station Emergency Generator Bid Ref 00000-019.69

RECOMMENDATION

It is recommended the City Commission approve a contract with Consumers Energy of One Energy Plaza, Jackson MI, 49201 for installation of generator located at the 2830 Oakland Dr., in the amount of $127,479.26.

BACKGROUND

This is a sole source purchase and installation from Consumers Energy. The City of Kalamazoo owns and operates a sanitary sewage lift station at 2830 Oakland Dr. Currently lift station emergency power is supplied by a diesel powered portable generator that wastewater route personnel take to the site to restore power. This is a critical lift station and an automatic emergency generator will improve reliability.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

Funding for the project is in the FY 2019 Wastewater CIP budget.
FY 2019 CIP Wwr 0100204 ……………………………………………$47,479.26
O/M 590-640-00-000-975.000……………………………………………$80,000.00

Total Funding **$127,479.26**

Expenses

Generator and appurtenances…………………………………………$93,950.00
Secondary Charge for Distribution……………………………… $10,022.00
Gas Service Installation (Estimate) ………………………………… $23,507.26

$127,479.26

ALTERNATIVES

Although not recommended at this time, the City could choose to continue using the portable generators for emergency power.

ATTACHMENTS:

	Type	Description
🗋	Contract	Contract
🗋	Correspondence	Document

CONSUMERS ENERGY COMPANY
One Energy Plaza, Jackson, Michigan 49201

Quotation Only
Not an Invoice

TO: City of Kalamazoo
241 W South St
Kalamazoo, MI 49007

DATE: April 24, 2019

REFERENCE: Woods Lake Lift Station
2830 Oakland Drive

ATTN: Tom Koporetz

QUOTATION NO: 20180305-002629

The work or services covered hereby are not regulated by the Michigan Public Service Commission

DESCRIPTION

Consumers Energy Company ("Consumers Energy") proposes to perform, on a one-time basis, the following described services for the City of Kalamazoo ("Customer") at their Municipal Pumping facility located at 2830 Oakland Drive, Kalamazoo, MI:

Base Scope:

1. Remove Customer owned overhead transformers and overhead service wires from Consumers Energy poles, place transformers near base of the pole. Customer will be responsible for securing, removing and disposal of the transformers.

2. Perform transformer oil sample test, analyzing for PCB content on removed transformers. Test reports will be supplied to Customer.

3. Provide and install one (1) four (4) inch PVC conduit sleeve (via open trenching) from the utility pole to the new meter socket location for installation of new secondary service from Consumers Energy (see Item #2 in the "Notes" included herein).

4. Install new 200A utility meter socket, supplied by utility, to be mounted on outside of building.

5. Provide and install neutral bar in existing main disconnect and copper secondary wires.

6. Provide and install new 40kw natural gas generator and concrete pad.

7. Provide and install new 250A ATS.

8. Provide and install conduit and wire from generator to ATS, from ATS to existing main power panel and from meter socket to ATS.

For these services, Customer hereby agrees to pay Consumers Energy the lump sum amount of:
Ninety Three Thousand Nine Hundred Fifty Dollars ($93,950.00).

Payment:

Customer shall pay the above-set forth lump sum price to Consumers Energy as follows:

1. Fifty percent (50%) shall be invoiced upon Customer signing this quotation.
2. Fifty percent (50%) shall be invoiced upon the substantial completion of the project.

Notes:

1. Unless otherwise stated in the scope of work described herein, all work will be performed during Consumers Energy's (or its subcontractor's) normal weekday straight-time working hours.

2. **It is understood that any Consumers Energy electric utility distribution system costs for sale of Consumers Energy-owned equipment and / or material, modifications of its facilities, and removal of existing facilities, which are necessitated by Customer's conversion to or from primary service are not included in the work to be performed hereunder. Such distribution system costs may include, but are not limited to, work for establishing the new metering, electrical service feed connections, and abandonment and / or removal of existing facilities. Separate contractual agreements must be made with Consumers Energy for this work and it is understood that any costs assessed by Consumers Energy for any such work are in addition to the lump sum price shown herein and will be billed separately by Consumers Energy.**

3. Customer is responsible for making all arrangements to ensure Consumers Energy and/or its subcontractor(s) has all necessary access to the premises for performance of the work (in a timely manner).

4. Consumers Energy will obtain all electrical permits required for only the work explicitly described herein. Customer will be responsible for obtaining all other permits, including any electrical permits for work that is not explicitly described herein.

5. Where open-trench installation is performed, it is understood that Consumers Energy will backfill the trench with excavated materials, but will not be responsible for any landscaping or other final surface restoration. Excavation is to be performed under no-frost conditions. Customer is responsible for identifying and visibly marking all of its underground facilities in the areas affected by this work prior to Consumers Energy's commencement of said work. Customer is responsible for repairs to any of its unmarked facilities.

6. Customer understands that an interruption to its electrical service will be required in order to complete the scope of work described herein.

7. Consumers Energy does not guarantee that the above-described work constitutes the only repairs, replacements, maintenance or other work that may be needed on Customers' abovementioned facilities. Customer expressly understands that the services (and pricing) under this Agreement includes only the work expressly described hereinabove. If the services to be performed under this Agreement, as described hereinabove, disclose a need for additional repairs, replacements, maintenance or other work, then Customer understands that Consumers Energy is not responsible for the performance of same unless and except as may be provided for (including the compensation to be paid by Customer to Consumers Energy therefor) in a separate contract entered into by the parties.

THE ATTACHED TERMS AND CONDITIONS ARE INCORPORATED HEREIN AND MADE A PART HEREOF. CONSUMERS ENERGY EXPRESSLY REJECTS ANY OTHER, ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS THAT MAY BE SET FORTH IN ANY PURCHASE ORDER, REQUEST FOR PROPOSALS OR OTHER DOCUMENT ISSUED BY CUSTOMER. UPON BEING ACCEPTED BY CUSTOMER BY SIGNING BELOW, AND CONFIRMED BY CONSUMERS ENERGY BY CONSUMERS ENERGY'S AUTHORIZED REPRESENTATIVE SIGNING BELOW, THIS QUOTATION SHALL BECOME A CONTRACT BETWEEN THE PARTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE IMMEDIATELY FOLLOWING PARAGRAPH, IT IS UNDERSTOOD THAT THIS QUOTATION WILL NOT BECOME A CONTRACT BETWEEN THE PARTIES, OR OTHERWISE BINDING UPON CONSUMERS ENERGY IN ANY MANNER, UNTIL IT HAS BEEN SO ACCEPTED BY CUSTOMER AND CONFIRMED BY CONSUMERS ENERGY BY EACH SUCH PARTY (OR ITS REPRESENTATIVE) SIGNING BELOW AS AFORESAID.

NOTE: BY RECEIVING THIS QUOTATION, AND REGARDLESS OF WHETHER OR NOT THIS QUOTATION IS ACCEPTED AS SET FORTH ABOVE, CUSTOMER ACKNOWLEDGES THAT THIS QUOTATION CONTAINS INFORMATION THAT IS CONFIDENTIAL AND PROPRIETARY TO CONSUMERS ENERGY AND MAY NOT BE DISCLOSED BY CUSTOMER TO ANY THIRD PARTY WITHOUT CONSUMERS ENERGY'S EXPRESS WRITTEN CONSENT. UNAUTHORIZED DISCLOSURE MAY AT CONSUMERS ENERGY'S SOLE OPTION RESULT IN WITHDRAWAL OF THIS QUOTATION AND IMMEDIATE RESTITUTION BY CUSTOMER TO CONSUMERS ENERGY OF ALL OF CONSUMERS ENERGY'S COSTS AND EXPENSES INCURRED IN PREPARING THIS QUOTATION.

To accept this Quotation, Customer must sign and return to Consumers Energy within __30__ days from the date shown above.

Quotation Prepared By: Leslie A. Johnston **Phone #:** 616-954-6908 **email:** leslie.johnston@cmsenergy.com

____________CITY OF KALAMAZOO_____________ (Customer) hereby accepts the above Quotation:

By (signature): ______________________________________

Printed Name: ______________________________________ **Date:** ______________________

Printed Title: ______________________________________

Confirmed:
CONSUMERS ENERGY COMPANY

By (signature): ______________________________________

Printed Name: ______________________________________ **Date:** ______________________

Printed Title: ______________________________________

TERMS AND CONDITIONS

1. Work: References in these Terms and Conditions to the "work" shall mean the work or services to be performed by Consumers Energy for Customer as set forth on the face of this Contract.

2. Starting and Completion Dates: Any starting dates, completion dates and/or other schedule-related dates set forth in this Contract are estimated and/or approximate only and are not guaranteed by Consumers Energy. Without limiting the generality of the foregoing: (i) whenever the scope of the work includes equipment or materials that Consumers Energy will be ordering from manufacturers or suppliers, then any indicated delivery dates therefor are strictly estimates based entirely on Consumers Energy's current information from the applicable manufacturers or suppliers, which may be subject to change, and any associated starting, completion or other schedule dates are accordingly also estimates only and subject to change; and (ii) any starting, completion or other schedule dates are also contingent in any case upon Customer timely making its premises and facilities and/or any necessary information available to Consumers Energy.

Notwithstanding any other provisions hereof, if no specific dates for performance of the work are set forth in this Contract, and if Consumers Energy determines, in its sole good faith judgment, that Customer has in whole or in part not cooperated with Consumers Energy in scheduling the work for performance within a reasonable time after the date this Contract is entered into (or, if materials or equipment are to be ordered by Consumers Energy before the work can begin, then within a reasonable time after the date the applicable materials or equipment have been received by Consumers Energy), then, regardless of the cause of the delay (and even if otherwise legally excusable), Consumers Energy may, at its option (and in addition to any other rights or remedies that it may have), terminate this Contract in whole or in part by written notice to Customer. In the event of such termination by Consumers Energy, Consumers Energy shall be entitled to receive payment from Customer for: (i) any work performed and/or materials and equipment installed (or acquired by Consumers Energy for the work even if not yet installed) up to the termination date; (ii) any costs, expenses or charges incurred by Consumers Energy as a result of non-cancelable contracts or purchase orders entered into by Consumers Energy in connection with the work, and/or in the nature of restocking charges or the like; and (iii) any other reasonable cancellation costs, expenses and charges; all as reasonably determined by Consumers Energy.

3. Title and Risk of Loss: Title, and all risk of loss or damage, to any materials and equipment that are to be furnished and installed hereunder (or, if applicable, any such items that are to be furnished to Customer without installation, for example, spare parts, if any, that are to be supplied to Customer hereunder) shall pass to Customer at the time the specific materials or equipment in question are delivered to and unloaded at the work site.

4. Invoicing and Payments: Consumers Energy will invoice Customer for the work hereunder at the time(s) specified on the face of this Contract, or, if no time(s) are so specified, then Consumers Energy will invoice Customer in full upon completion of the work. Due date(s) for payment by Customer shall be as set forth on the face of this Contract, or, if no due date(s) are so specified, then Customer shall pay Consumers Energy in full the amount set forth on each invoice within 30 days after the date of such invoice. Any payment not made on or before the due date shall be assessed a late payment charge computed at the higher of the rate of 2% per month or $15 per each 30 day period or portion thereof, whichever is higher (but in no event higher than the maximum rate that may be permitted by law), for the period such payment remains late, beginning on the date the payment becomes past due and ending on the date when the past due amount is paid in full. CONSUMERS ENERGY RESERVES A PURCHASE MONEY SECURITY INTEREST IN ANY EQUIPMENT OR MATERIALS FURNISHED AND/OR INSTALLED IN THE WORK HEREUNDER, AND IN ALL PROCEEDS THEREOF, AS SECURITY FOR CUSTOMER'S PAYMENT OF ALL SUMS DUE OR THAT MAY BECOME DUE UNDER THIS CONTRACT, UNTIL SUCH TIME AS ALL SUCH SUMS HAVE BEEN PAID BY CUSTOMER TO CONSUMERS ENERGY IN FULL; it being understood that the foregoing does not limit Consumers Energy's rights to claim any other liens (such as but not necessarily limited to a construction lien) to which it may be entitled by law by reason of any nonpayment by Customer.

5. Warranty/Disclaimer: Consumers Energy warrants that the work performed under this Contract will be performed in accordance with accepted industry standards. The sole liability of Consumers Energy and the exclusive remedy of Customer for defective work, under the foregoing warranty or otherwise, shall be re-performance of such work on the same conditions as the original work; subject to the further condition that Customer must notify Consumers Energy in writing of any breach of warranty with respect to the work within thirty days after completion of the work.

It is further expressly understood that the above warranty does not extend in any manner to any equipment or materials furnished in or as part of the work hereunder. If and to the extent that any such equipment or materials carry a warranty from a third party manufacturer or supplier, then, to the extent that such manufacturer's or supplier's warranties may extend to Customer as the end-user, Customer shall have the benefit of such warranties, but Consumers Energy shall in no event itself be deemed liable under any such manufacturers' or suppliers' warranties. It is expressly understood that as between Customer and Consumers Energy, all equipment and materials furnished in or as part of the work hereunder are provided strictly on an **AS-IS** basis, and the sole warranty thereon shall be the manufacturers' or suppliers' warranty to the extent that there is any such warranty and that the benefit of same accrues to Customer as the end-user.

EXCEPT AS EXPRESSLY STATED ABOVE IN THIS SECTION 5, CONSUMERS ENERGY MAKES NO WARRANTIES (EXPRESS, IMPLIED OR STATUTORY), INCLUDING WITHOUT LIMITATION THAT CONSUMERS ENERGY MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Without limiting the generality or applicability of any other limitations or disclaimers of liability or remedies set forth above in this Section 5 or elsewhere in this Contract, it is expressly understood that: **(i)** in no event shall Consumers Energy be responsible for any repairs, replacements, calibrations or other corrections of any kind made by others with respect to the work hereunder; **(ii)** in no event shall Consumers Energy be liable for any loss or damage whatsoever by reason of its failure to discover, report or modify any latent defects or defects inherent in any facilities, systems or equipment of Customer that are the subject matter of the work; and **(iii)** if the work under this Contract include the installation of, and/or the performance of any service upon, any type of equipment, in no event shall Consumers Energy have any obligations for breach of warranty or otherwise if Customer fails to transport, store, use, operate or maintain such equipment in accordance with generally accepted industry practices and the provisions of any transportation, storage, use, operating or maintenance instructions provided by the manufacturer or by Consumers Energy.

6. Third Party Indemnity: Customer shall indemnify and hold Consumers Energy, its agents, employees, vendors and subcontractors harmless from and against, and shall at Consumers Energy's option undertake the defense of, any and all claims, losses, liabilities and damages (including but not limited to environmental harm), and any and all associated costs (including but not limited to reasonable attorneys' fees), which may be asserted by any third party against Consumers Energy, or which Consumers Energy may sustain or incur, as a result of the work performed under this Contract, whether based on warranty, contract, tort (including but not limited to negligence), strict liability or otherwise, except liability for bodily injury to persons or damage to property caused solely by the negligence of Consumers Energy, its agents or employees.

7. Limitation of Liability: Without limiting the generality or applicability of any other limitations or disclaimers of liability or remedies set forth herein, it is expressly understood that in no event shall the total liability of Consumers Energy, its agents, employees, vendors and subcontractors, with respect to any and all claims under or arising out of this Contract, or the performance of breach thereof, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, exceed in aggregate the price paid by Customer to Consumers Energy for the work under this Contract, and such liability of Consumers Energy shall in no event include special, indirect, punitive, incidental or consequential damages of any nature (including but not limited to loss of revenue or its use; loss by reason of plant or equipment shutdown or inability to operate at rated capacity; increased expense of operation of plant or equipment; increased cost of purchasing or providing equipment, materials, supplies or services outside Consumers Energy's scope of work hereunder; costs of replacement power or capital; claims of Customer's customers; or inventory or use charges) even if Consumers Energy has been advised of the possibility of such damages. This Limitation of Liability section shall prevail over any conflicting or inconsistent provisions contained herein or in any other applicable document and shall be in effect even if the remedy or remedies set forth elsewhere herein fail in their essential purpose.

8. Force Majeure: Consumers Energy shall in no event be in breach of contract as a result of any delay in performing, or failure to perform, its obligations if such delay or failure is due to strikes or other labor troubles; any inability to obtain, upon reasonable terms, equipment, materials, parts, components, supplies or transportation for any reason, including default of suppliers or subcontractors; acts of God; fire; flood; storm; earthquake or other natural calamities; war; insurrections; riot; embargoes; curtailment; order, regulations or restrictions imposed by governmental authorities; or any other cause which is beyond Consumers Energy's reasonable control, whether of a similar or dissimilar nature to any of the foregoing and whether or not existing or foreseeable at the time this Contract is entered into. Consumers Energy shall have no obligation to settle any strike or other labor difficulty in a manner not completely satisfactory to it. Should any such delay occur, the time for the performance of Consumers Energy's obligations shall be extended by a time equal to the length of the delay plus such additional time as is reasonable necessary to enable Consumers Energy to resume performance of its obligations.

9. Taxes: If Consumers Energy is at any time required by applicable law or regulation to pay or collect any federal, state or local sales, use, gross receipts, excise or similar taxes with respect to the work, equipment or materials supplied or consumed therein, or the prices, rates or charges therefor under this Contract, then such taxes shall, upon demand, be paid by the Customer to Consumers Energy in addition to the prices, rates and/or charges set forth in this Agreement.

10. Independent Contractor Relationship: In the performance of the work hereunder, Consumers Energy shall be deemed to be an independent contractor.

11. Avoiding Interference; Worksite Conditions: Customer shall provide Consumers Energy and its subcontractors with full, unimpeded and timely access to the worksite for the performance of the work, and shall do all necessary or appropriate coordination with other contractors, vendors, Customer's own personnel and/or others as may be needed to avoid delaying Consumers Energy or its subcontractors in, or other interference with, the performance of the work. Customer shall provide a safe and proper worksite, compliant with all applicable laws, orders, rules and regulations of any governmental authority, for Consumers Energy's personnel, agents and/or subcontractors.

12. Assignment and Subcontracting: Any assignment or other transfer of this Contract or any part thereof by Customer without the previous written consent of Consumers Energy shall be void. Consumers Energy may subcontract any services hereunder.

13. Default: If Customer defaults in the timely performance of any of its obligations hereunder, then Consumers Energy may, at its option, and in addition to any and all other rights or remedies it may have hereunder or at law or equity, terminate this Contract by written notice to Customer.

14. Governing Law; Actions; Etc.: This Contract shall be deemed a Michigan contract and shall be governed by and interpreted in accordance with the laws of the State of Michigan; excluding any conflicts of laws principles that would result in this Contract being interpreted in accordance with any different law. Venue for any lawsuit arising out of or in connection with this Contract shall be exclusively in the courts of the State of Michigan or a Federal court sitting in the State of Michigan. Any legal action against Consumers Energy relating to this Contract or the breach thereof shall be commenced within one year from the date on which the claimed breach, default or other cause of action arose (and, without limiting the foregoing, in all events not later than one year after the date of completion or other cessation of performance of the work hereunder). This Contract is intended for the benefit of the parties herein only and does not grant any rights to any third parties unless otherwise specifically stated herein. The section headings in this Contract are included for reference only; they shall not limit or restrict the interpretation and construction of any of the provisions of this Contract.

15. Entire Agreement; Changes: With respect to the subject matter hereof, this Contract supersedes all previous representations, understandings and negotiations, either written or oral, between the parties hereto or their representatives and constitutes the entire agreement between the parties. No part of any purchase order, request for proposals or other documents issued by Customer shall be binding upon Consumers Energy or affect its rights or obligations hereunder. The terms of this Contract shall not be changed, superseded or supplemented, except in writing signed by authorized representatives of Consumers Energy and Customer.

16. Electronic Documents: After the Contract has been duly signed, delivered and received, by either party to the other party by means of telecopy (fax) transmission or attached to an e-mail (or similar electronic transmission) in an unalterable image format, the Contract shall be considered as validly delivered as the physical delivery of the signed Contract in paper form. In addition, it is further understood that this Contract may at Consumers Energy's option be imaged and stored electronically by Consumers Energy and introduced as evidence in any proceeding as if an original business record; and Customer will not object to the admissibility of such an image as evidence in any proceeding on account of having been stored electronically.

Consumers Energy
Count on Us
A CMS Energy Company

CEM Support Center
Consumers Energy, CEM Support Center, Lansing Service Center, Rm. 122, 530 W. Willow St., P.O. Box 30162 Lansing, MI 48909-7662

April 15, 2019

	NOTIFICATION #'s:
ELECTRIC SERVICE:	1047912562
ELECTRIC OH DISTRIBUTION:	1047912548

CITY OF KALAMAZOO MUNICIPAL PUMPING
241 W SOUTH ST
KALAMAZOO, MI 49007-4707

REFERENCE: 2830 OAKLAND DR, KALAMAZOO

Dear Valued Customer,

Thank you for contacting Consumers Energy for your energy needs. Please note the Notification Number above and include it on any correspondence you send. Please note the Account Number, located above the Account Name on your invoice, when submitting payment.

A copy of our proposed design drawings are enclosed.

The estimated cost for your energy request is as follows:

Refundable Agreement for Installation of Electric Facilities:		
Non Refundable Agreement for Installation of Electric Facilities:	$	9,791.00
Overhead Electric Service		
Underground Electric Service:	$	231.00
Excess Footage Charge:		
Temporary Electric Service:		
Winter Construction Costs:	$	-
Additional Costs (See Invoice):		
Total Estimated Cost	**$**	**10,022.00**
Less Prepayment Received:	$	-
Total Estimated Cost Due:	**$**	**10,022.00**

Costs may also result from practical difficulties encountered during construction and additional payment may be required if:

- Work presently designed is done outside normal business hours.
- Change to the location of the service entrance.
- Changes to the design or route.
- Other construction delays.

Enclosed is a copy of the Agreement for Installation or Modification of Electric Facilities and invoice that is valid for 60 days from the date of this letter and is subject to change thereafter. This cost estimate includes only work required for Consumers Energy and does not reflect any work or costs that may be required by other parties, including other utilities. Please review and sign the Agreement for Installation of Electric Facilities and return in the envelope provided or email to: POBoxCEServiceRequest@cmsenergy.com. You will receive a copy of the agreement after it is signed and dated by a Consumers Energy company representative. Once we receive your payment and any required easements, contracts, permits or inspections we can proceed with your request. Payment in full is required before the installation will be scheduled for construction.

CONTACT OUR SECURE CREDIT/DEBIT CARD PAYMENT CENTER @ 1-866-329-9593 TO PAY “FEE FREE” WITH YOUR VISA OR MASTERCARD OR MAKE A PAYMENT ONLINE AT: www.consumersenergy.com AND CLICK "MAKE PAYMENT" TO USE THE GUEST PAY FEATURE.

Please review all attached materials carefully and direct inquiries for your request to:

MARTIN D CHRISTOPHEL at 269-620-5104

Consumers Energy
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A CMS Energy Company

NOTICE FOR NATURAL GAS AND ELECTRIC CUSTOMERS
WINTER CONSTRUCTION/PRACTICAL DIFFICULTIES CHARGES

An **additional** construction charge of $3.00 per foot for **all underground construction footage** will be applied to gas and electric facilities installed **starting December 15, 2018, through April 15, 2019**. To help you avoid this charge, we've included important dates and site requirements below. **Please note that Electrical inspection is a requirement for construction**.

NATURAL GAS AND UNDERGROUND ELECTRIC SERVICE
FROM EXISTING FACILITIES

Applications/request for service **must be received on or before November 1, 2018; the job site must be ready including inspection; and all required easements (if applicable) and estimated payments must be received on or before November 27, 2018**. (Please note that the November 27, 2018, payment deadline replaces the payment due date listed at the top of your invoice.)

If you are in the early stages of construction, please make sure your basement (or foundation) is backfilled, and the service route from the building to the property line is within 3 inches of final grade. Please keep this route clear of all dirt and building materials so that our employees can work safely and efficiently.

If you're unable to meet the above dates or site conditions, you may want to consider installing conduit for your Consumers Energy natural gas and/or electric service. Conduits that are properly installed and usable will not incur the winter charges.

GAS MAIN AND UNDERGROUND PRIMARY ELECTRIC EXTENSIONS

Application/request for main and primary underground electric extension **must be made on or before October 1, 2018, and the following must be completed on or before November 1, 2018**:

1. All payments must be made in advance, including your service payment. Please note that the November 2nd payment deadline replaces the payment due date listed at the top of your invoice.
2. Governmental agencies must have returned required construction permits.
3. The site must be clear and ready for construction, including the service route.
4. Consumers Energy must receive all required easements.

GAS METERS

You do **not** need to call us to request gas meter installation for single-unit buildings that require a 250 Metris meter. We will set gas meters within 5 days after the gas service has been installed.

To schedule installation of a gas meter for a multifamily building or building that requires a meter larger than a 250 Metris meter, please call us at (800) 477-5050. These installations require connecting a fuel line to our meter bracket and at least one permanent natural gas appliance. Also, we need your help to access the building. If your township requires a pressure test inspection tag, please verify this has been completed before requesting a meter set.

NOTE: To help us schedule your meter set when you need it and avoid delays, we suggest that you apply for your natural gas and electric service at the same time you apply for your building permit.

If you have any questions, please call your Project Coordinator or Service Designer:
MARTIN D CHRISTOPHEL at 269-620-5104

A CMS Energy Company

Dear New Electric Customer:

Thank you for your request for electric service. In order to expedite your request and meet your schedule, we have deleloped the following list of items requiring action by you (Customer Responsibilities). These requirements must be met before we can install your service.

CUSTOMER RESPONSIBILITIES

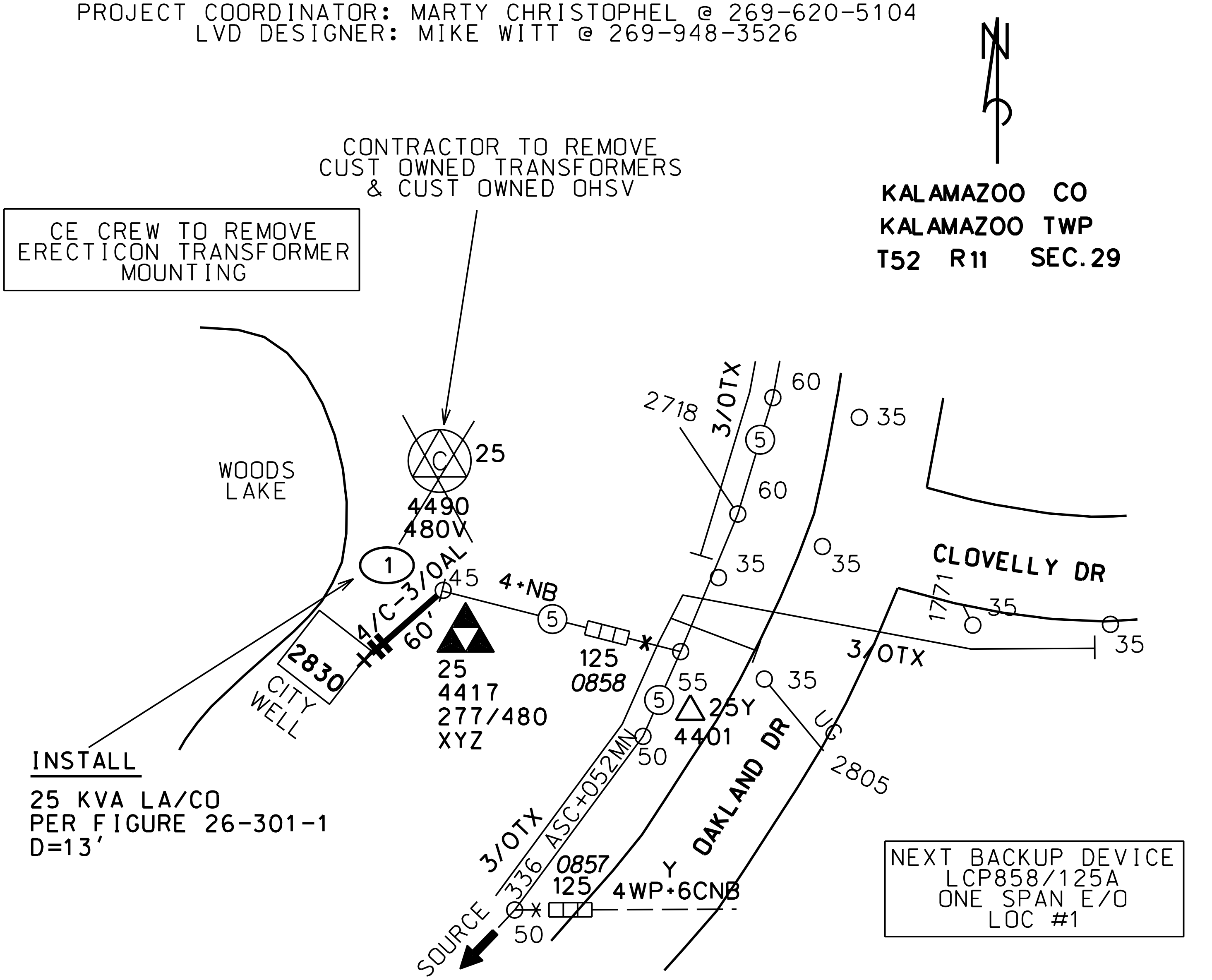
1)	Service Location:	A copy of our design document may be included in your customer packet. If included, your service entrance equipment should be located at the spot indicated by an "X" as shown on the design document (Form 2804). Install the meter socket 3½ - 5 feet above final grade of this location.
2)	Meter Socket:	Residential metering equipment furnished free of charge, owned and maintained by Consumers Energy includes: meters and one or two position self-contained meter sockets. Contact the company representative assigned to your notification for locations to pick-up the meter socket. For metering installations that require a three or more position self-contained meter socket, the customer will be required to purchase approved meter sockets from a distributor or supplier of their choice.
3)	Payment:	An invoice may be included in your customer packet. If included, the deposit amount on the invoice must be paid prior to installation of your service. Additional charges may apply and will be billed/or a refund issued upon completion of your service installation.
4)	Site Conditions:	The site must be within three (3) inches of final grade before we can install your service. If you have requested an underground service, you will need to clear a 12-foot wide path that is free of building materials, brush, trees, shrubs, etc, along the proposed service route to avoid delays. Our Forestry Department can provide this service for you at an additional charge. For overhead service, nominal line clearing will be provided at no charge. Any extensive line clearing may require additional charges. After your service is installed, we will backfill and place excavated earth over the trench. You are responsible for the final restoration and ensuring that the grading over the trench is at the required level.
5)	Staking:	To avoid damage, you must mark (stake) your existing private underground facilities such as: well, septic systems, sprinkler system, any underground wires, buried LPG tanks, piping, or other unusual buried facilities. These stakes must be apparent when we arrive to install the service. We cannot reimburse you for damage to facilities that are not properly staked. You do not need to stake the utilities' electric, gas or communication lines.
6)	Mobile Home or Temporary Service:	If you requested service to a mobile home or temporary electric service, you will be required to set your own pole or install a pipe for underground service in accordance with Consumers Energy specifications. Contact the Consumers Energy representative assigned to your notification for additional information.
7)	Construction Repair:	If additional line work is required to reach your location due to site conditions or other unusual circumstances, extra charges may be incurred.
8)	**ELECTRICAL INSPECTION:**	**YOU ARE RESPONSIBLE FOR ENSURING THAT ALL ELECTRICAL PERMITS AND INSPECTIONS ARE OBTAINED BEFORE ANY SERVICE CONNECTIONS CAN BE MADE. WIRINGS MUST COMPLY WITH LOCAL AND STATE ELECTRICAL CODES. NOTE: CAUTION SHOULD BE USED WHEN WORKING INSIDE FUSE PANEL. PANEL MAY BE ENERGIZED AFTER SERVICE IS**
9)	Additional Charges:	Underground services installed during the months of December through April may be subject to an additional charge. Unusual site conditions may also require an additional charge. These charges will be communicated to you in advance of construction.
10)	Joint Trenching:	Discounts for installation of electric and gas service in the same trench (joint trench) are applied in calculating the gas service contribution.
11)	Usage Rate:	Customers are billed at a general service rate while the structure is under construction. If the structure is a home, then the owner of the home, upon receiving a Certificate of Occupancy, should call 1-800-477-5050 to ensure the gas and/or electric rates are changed to an appropriate rate.

Please keep these procedures in a convenient location to review as we proceed with designing your service and constructing the job. If any of the characteristics of the service request are changed and not communicated to us, you may experience delays and/or additional charges.

If you have any questions regarding these requirements please direct inquiries to:

MARTIN D CHRISTOPHEL at **269-620-5104**

PROJECT COORDINATOR: MARTY CHRISTOPHEL @ 269-620-5104
LVD DESIGNER: MIKE WITT @ 269-948-3526



NOTIFICATION NUMBER
1047912548

	VOLTAGE DROP	FLICKER	TRANSFORMER DEMAND LOAD (KVA)	MOTOR LOAD
EXISTING				
PROPOSED	3.72	2.73	99KVA	?

ORDER NUMBER

Consumers Energy
A CMS Energy Company ELECTRIC

DESIGNED BY	DATE
MAWITT	04/05/19
APPROVED BY	DATE
SHEET 1 OF 1	SCALE NONE

2830 Oakland Dr, Kzo - ECNC NLO

For: CITY OF KALAMAZOO
MUNICIPAL PUMPING
2830 OAKLAND DR

-CONSTRUCTION CERTIFICATION-

Work was constructed as Engineered or Changed as Indicated.
All Salvageable Material Was Returned to Stores.

Signed ______________ in Direct Charge of Work

Dates: Started ______________ Completed ________

MISS DIG NUMBER: ______________ DATE: ______

TLM NUMBER	# OF RODS	OHMS
5211294417		
SUBSTATION	WD NO.	
OAKWOOD	0275	
CIRCUIT	CKT NO.	LCP NO.
HILLCREST	03	0910

CONSTRUCTION MEASURE NUMBER		
100004298666		
ORDER TYPE	MAINTENANCE ACTIVITY TYPE	DESIGN NUMBER
ECNC	NLO	11032163
ECNC	NSU	11032164
STAKED	[x] YES	[ ] NO
TREES	[ ] YES	[x] NO

ELECTRIC CAD TITLE BLOCK (8-1/2x11) 10-30-2008
SHEET A

DESIGN FILE NAME: 11032163.001

T R S 52 11 29

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ADDRESS	
2830 Oakland Dr ECNC NSU	
PROJECT TITLE	
2830 OAKLAND DR, KALAMAZOO	
DESIGN NUMBER	AS-BUILT NUMBER
11032164	
CONSTRUCTION MEASURE NUMBER	
100004298966	
NOTIFICATION NUMBER	
1047912562	
ORDER TYPE	ORDER NUMBER
ECNC	
MAINTENANCE ACTIVITY TYPE	
NSU	
METER ORDER NUMBER	METER NUMBER
READ	METER LOCATION

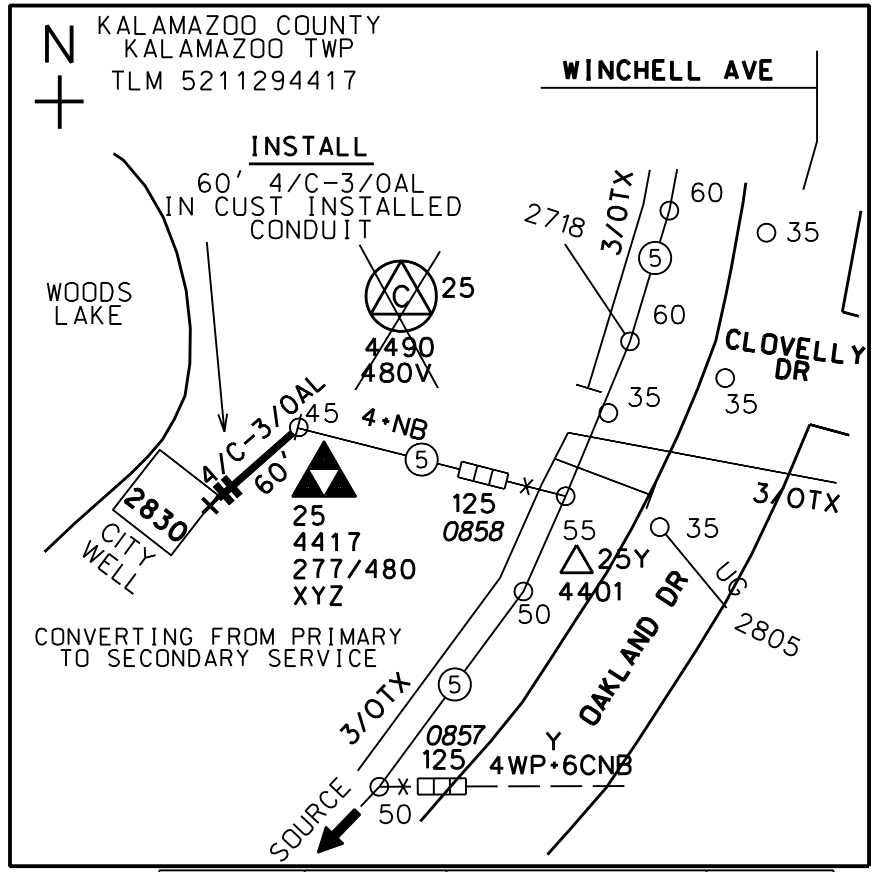
[X] SET [ ] REMOVE [ ] EXCHANGE

DESIGNED BY	DATE
MAWITT	04/05/19

Consumers Energy

A CMS Energy Company

SERVICE



	VOLTAGE DROP	FLICKER	TRANSFORMER DEMAND LOAD (KVA)	MOTOR LOAD
EXISTING				
PROPOSED	3.72	2.73	99KVA	?

PROJECT COORDINATOR: MARTY CHRISTOPHEL @ 269-620-5104
LVD DESIGNER: MIKE WITT @ 269-948-3526

SERVICE SKETCH TITLE BLOCK
Form 2804 10-30-2008
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Consumers Energy
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A CMS Energy Company

CEM Support Center
Consumers Energy, Lansing Service Center, Rm. 122, 530 W. Willow St., P.O. Box 30162 Lansing, MI 48909-7662

PLEASE RETURN THE CHECKED DOCUMENTS BELOW TO CONSUMERS ENERGY IN THE ENVELOPE PROVIDED

TO EXPEDITE SERVICE, RETURN VIA EMAIL TO:
POBoxCEServiceRequest@cmsenergy.com

☑	AGREEMENT FOR INSTALLATION (Please return all pages of contracts) (Form 93, Form 94 and Form 95 - 2 Page Document Each) (Form 861, Form 862 and Form 230 - 4 Page Document Each)
☑	PAYMENT WITH INVOICE STUB (BOTTOM STUB IS REQUIRED FOR PROCESSING)
☐	REQUEST FOR ELEVATED CUSTOMER DELIVERY PRESSURE
☐	STANDARD LIGHTING CONTRACT (MUST BE CERTIFIED BY CLERK)
☐	SIGNED CUSTOMER ATTACHMENT PROGRAM (CAP) CONTRACT (PLEASE ENSURE TO CHECK PAYMENT OPTION ON CONTRACT)
☑	GO READY FORM (FORM 1250) TO EXPEDITE SERVICE, RETURN VIA EMAIL TO: POBoxCEServiceRequest@cmsenergy.com
☐	SITE READY PHOTO(S) TO EXPEDITE SERVICE, RETURN VIA EMAIL TO: POBoxCEServiceRequest@cmsenergy.com
☐	OTHER:

NOTIFICATION REFERENCE NUMBERS

ELECTRIC SERVICE NOTIFICATION:	1047912562
GAS SERVICE NOTIFICATION:	
ELECTRIC OH DISTRIBUTION NOTIFICATION:	1047912548
ELECTRIC UG DISTRIBUTION NOTIFICATION:	
GAS MAIN NOTIFICATION:	
STREETLIGHT NOTIFICATION:	

Consumers Energy Count on Us®

AGREEMENT FOR MODIFICATIONS OF ELECTRIC FACILITIES (NONREFUNDABLE)

PART I

Effective Date: 4/9/2019 **Notification Number:** 1047912548
(Drawing Attached, Exhibit A)

Company:

CONSUMERS ENERGY COMPANY
a Michigan Corporation

530 W. Willow St
Lansing, MI 48909-7662
(Address)

Customer:

CITY OF KALAMAZOO MUNICIPAL PUMPING
(Name)

241 W SOUTH ST
(Street and Number)

KALAMAZOO, MI 49007-4707
(City, State and Zip Code)

Attention: ______________________

Service Location: 2830 OAKLAND DR,KALAMAZOO

Township ______________________ County KALAMAZOO

Town 52 Range 11 Section 29

Price: $ 9,791.00

NOTE: ADDITIONAL CHARGES MAY BE OWED. SEE PART II, SECTION 2 and 5 FOR DETAILS.

The Price is good for sixty (60) days from the effective date above. Part II, CONSUMERS' FACILITIES AGREEMENT TERMS AND CONDITIONS is attached hereto and is a part of this Agreement. CUSTOMER ACKNOWLEDGES HAVING READ SAID TERMS AND CONDITIONS. CONSUMERS ENERGY COMPANY EXPRESSLY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SET FORTH IN ANY PURCHASE ORDER ISSUED BY CUSTOMER OR IN ANY OTHER CONTRACT DOCUMENT ISSUED BY CUSTOMER.

CONSUMERS ENERGY COMPANY	CITY OF KALAMAZOO MUNICIPAL PUMPING (Customer)
By ______________________ (Signature)	By ______________________ (Signature)
______________________ (Print or Type Name)	______________________ (Print or Type Name)
______________________ (Date Signed)	______________________ (Date Signed)
Title ______________________	Title ______________________

AGREEMENT FOR MODIFICATIONS OF ELECTRIC FACILITIES (NONREFUNDABLE)

TERMS AND CONDITIONS
PART II

1. For any new facilities being installed to accommodate new load to the Company's system, a non-refundable contribution pursuant to tariffs filed with the Michigan Public Service Commission (Rule C6) is included in the Price.

In consideration of Customer's request and agreement to pay all the costs of relocation/modification of Consumers' facilities, Consumers hereby agrees to relocate and/or modify its electric facilities. The facilities to be relocated or modified are shown on the drawing attached as Exhibit A. Pursuant to tariffs filed with the Michigan Public Service Commission (Rule C1), when relocation or modification of Consumers' facilities is requested or made necessary by a customer, all costs for the relocation or modification are charged to the requesting party.

For the above mentioned activities, all costs are non-refundable and are due prior to the start of construction. The Customer shall pay the Price identified in Part I upon execution of this Agreement.

2. After all work is completed, Consumers will invoice the Customer for any additional amounts owed.

The Customer is solely responsible to contact the owner of any phone, cable TV or any other facility that may be attached to Consumers' poles and make arrangements for the removal and/or relocation of those facilities at the Customer's expense. The Price identified in Part I does not include any cost the owner of those facilities may charge for the removal and/or relocation.

The Customer shall also be responsible for additional extraordinary construction costs that result from, but are not limited to site conditions, environmental contamination, underground, or buried obstructions, permit fees or other governmental restrictions. If work is to be completed outside of Consumers' normal working hours at the Customer's request, incremental costs shall apply, and these costs will be the Customer's responsibility.

Any amounts to be paid pursuant to this Agreement are exclusive of federal, state, county, municipal, or local property, license, excise, sales use, gross receipt or similar tax with respect to the work covered hereunder and if Consumers is required by applicable law or regulation to pay or collect any such tax or if any such taxes are assessed against Consumers on account of performance of this Agreement, no matter when such assessment is made, then such tax or taxes shall be paid by the Customer to Consumers in addition to the amounts provided for herein.

3. Prior to the installation of the facilities, and as a condition precedent thereto, the Customer shall provide, at no expense to the Company, recordable easements, on a form provided by the Company, granting all necessary rights of way for installation and maintenance of said facilities. If said facilities are to serve a residential subdivision, said easements shall include, but not be limited to, rights of way for streetlighting in the subdivision by means of underground facilities, even though Consumers does not undertake to provide streetlighting facilities and service as a part of this Agreement. If said easements are not secured and delivered to Consumers within thirty (30) days after execution of this Agreement, Consumers may, at its option, refund all payments made to it hereunder by the Customer, without interest, after deducting reasonable expenses incurred by Consumers on account of this Agreement, and this Agreement shall thereupon terminate.

4. For any underground facilities included in the work to be performed hereunder, the Customer shall provide, at no expense to Consumers, rough grading (not more than three inches below finished grade) so that the underground facilities can be properly installed in relation to the finished grade level. The Customer shall maintain the average elevation within six feet of any cable, conduit wire, conductor or other underground facility thereafter at a level not to exceed twelve inches above or three inches below the grade level established at the time of installation of said underground facilities. Further, the Customer shall maintain the ground surface elevation in an area four feet wide around any transformer pad, subsurface transformer, junction vault or other support at an elevation of not less than three inches and not more than six inches below the base of any transformer mounted on a pad or other support and not more than six inches below the top of any subsurface transformer or junction vault; provided, however, that changes in the ground surface elevation in excess of the limits herein prescribed may be permitted upon written consent of Consumers. Consumers will backfill and place excavated earth over any area of construction; the Customer is responsible for the final restoration of the construction area.

TERMS AND CONDITIONS (CONT.)

5. If any underground facilities or any portion thereof are to be installed between December 15 and April 15, the Customer shall, prior to installation of said underground facilities or portion thereof, pay Consumers an additional nonrefundable contribution per trench foot as stated in the "Computation of Electric Distribution System Line Extension Deposit and Contribution" for the portion of said facilities installed during said period (Winter construction/practical difficulties charge). The Customer will receive a credit for any part of such winter charge paid by other utilities for joint use of the trench or paid by the Customer for installation, by Consumers, of gas pipe in the same trench. No portion of said facilities will be installed between December 15 and April 15, unless the Customer has paid such additional contribution.

In addition, a further nonrefundable contribution in addition to that provided for herein may be required where, in Consumers' judgment, practical difficulties not considered in determining the Customer's estimate such as water conditions or rock near the surface are encountered during construction. If the Customer does not make such additional contribution within fifteen (15) days after receiving written notice of the necessity for and amount of such additional contribution, Consumers may, at its option, refund all payments made to it hereunder by the Customer, without interest and deducting reasonable expenses incurred by Consumers, and this Agreement shall thereupon terminate.

6. Consumers shall not be in breach of contract as a result of any delay in performing its obligations if such delay is due to strikes or other labor troubles; inability to obtain labor, materials, components, supplies, for any reason, including default of suppliers or subcontractors; acts of God; fire; flood; storm; earthquake or other natural calamities; war; insurrections; riot; embargoes; curtailment; order; regulations or restriction imposed by governmental authorities; or any other cause which is beyond the reasonable control of Consumers, whether of a similar or dissimilar nature and whether or not existing or foreseeable on the scheduled date of commencement of the work. Consumers shall have no obligation to settle any strike or other labor difficulty in a manner not completely satisfactory to it. Should any such delay occur, the time for the performance of Consumers' obligations shall be extended by a time equal to the length of the delay plus such additional time as is reasonably necessary to enable Consumers to resume performance of its obligations.

7. Consumers warrants that any work performed under this Agreement shall be performed by properly skilled personnel in accordance with generally accepted standards for the work being performed. The sole liability of Consumers for defective work under this warranty or otherwise, shall be limited to reperforming any such work on the same conditions as the original work. The foregoing is the Customer's exclusive remedy and, EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

In no event shall Consumers be liable for any loss or damage whatsoever, by reason of its failure to discover, report or modify latent defect or defects inherent in the subject matter of the work. The aforementioned warranty is subject to the following conditions:

(a) Consumers shall not be responsible for repairs, replacements, or corrections made by others with respect to the work performed by Consumers.

(b) The Customer shall notify Consumers in writing of any breach or warranty with respect to the services performed by Consumers within ten (10) days after completion of the work.

8. THE TOTAL LIABILITY OF CONSUMERS, ITS AGENTS, EMPLOYEES, VENDORS AND CONTRACTORS WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF THIS CONTRACT INCLUDING THE PERFORMANCE OF OBLIGATIONS IN CONNECTION WITH THE WORK HEREUNDER, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE,
SHALL NOT EXCEED IN AGGREGATE ONE THOUSAND DOLLARS ($1,000.00) AND SHALL IN NO EVENT INCLUDE INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR ITS USE; LOSS BY REASON OF PLANT OR EQUIPMENT SHUTDOWN OR INABILITY TO OPERATE AT RATED CAPACITY; INCREASED EXPENSE OR OPERATION OF PLANT OR EQUIPMENT; INCREASED COSTS OF PURCHASING OR PROVIDING EQUIPMENT, MATERIALS, SUPPLIES OR SERVICES OUTSIDE CONSUMERS' SCOPE OR SUPPLY; COSTS OR REPLACEMENT POWER OR CAPITAL; CLAIMS OF THE CUSTOMER'S CUSTOMERS; OR INVENTORY OR USE CHARGES, EVEN IF CONSUMERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TERMS AND CONDITIONS (CONT.)

This limitation of liability section shall prevail over any conflicting or inconsistent provisions contained herein or in any other applicable document and shall be in effect even if the remedy or remedies set forth herein fail in their essential purpose.

9. The Customer shall indemnify and hold Consumers, its agents, employees, vendors and contractor(s) harmless from and against, and shall at Consumers' option undertake the defense of, any and all claim, losses, liability and damage (including environmental harm) and including reasonable attorney's fees which Consumers might sustain or incur or which might be asserted by any third party against Consumers as a result of the services provided under this Agreement, whether based on warranty, contract, tort (including negligence), strict liability or otherwise, unless caused solely by the negligence of Consumers, its agents or employees.

10. Any assignment or any part thereof by the Customer without the previous written permission of Consumers shall be void and of no effect. Consumers may subcontract any services hereunder.

11. This agreement does not create an employer/employee relationship between the parties. Consumers will retain sole and absolute discretion over the manner and means of carrying out Consumers' responsibilities hereunder.

12. The terms of this Agreement shall not be changed superseded or supplemented, except in writing by an authorized representative of Consumers and by a duly authorized representative of Customer.

13. This Agreement shall be deemed a Michigan contract and shall be construed in accordance with and governed by the laws of the State of Michigan. With respect to the subject matter hereof, this Agreement supersedes all previous representations, understandings and negotiations, either written or oral, between the parties hereto or their representatives and constitutes the entire contract between the parties. This Agreement is intended for the benefit of the parties hereto and does not grant any rights to any third parties unless otherwise specifically stated herein. No part of any purchase order, request for proposal or other documents issued by Customer shall be binding upon Consumers or affect its rights or obligations hereunder unless signed by a duly authorized representative of Consumers.

14. This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

15. Additional Items

Consumers Energy
Count on Us®

Amount Due:	$10,022.00
Please pay by:	April 29, 2019

Invoice Number	9315345234
PO Number	
PO Date	
Bill Date	04/15/19

CITY OF KALAMAZOO MUNICIPAL PUMPING
241 W SOUTH ST
KALAMAZOO MI 49007-4707

Account: 3000 1531 0919

2830 OAKLAND DR - KALAMAZOO - ELECTRIC UTILITY INSTALLATION - NOTIFICATION NUMBER (s): - 1047912562
- - 1047912548 - - - -

NONENERGY INVOICE

DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
Electric Overhead Dist. (Non Refundable)	1.0 EA	$9,791.00	$9,791.00
Electric Undergrnd Srvc Gen Srvc Conduit	60.0 FT	$3.85	$231.00
		TOTAL DUE:	$10,022.00

See Page 2 for Payment Options.

Consumers Energy is regulated by the Michigan Public Service Commission, Lansing, Michigan

INVOICE QUESTIONS - Contact: MARTIN D CHRISTOPHEL -269-620-5104 -

Fold, detach and mail this stub with your check made payable to Consumers Energy. Please write your account number on your check.

Consumers Energy
Count on Us®

Account: 3000 1531 0919

CONSUMERS ENERGY
CEM Support Ctr - Lansing RM 122
PO Box 30162
Lansing, MI 48909-7662

PREPAYMENT REQUEST

Amount Due:	$10,022.00
Please pay by:	April 29, 2019
Enclosed:	

6 330024863365 000010022002 0000 2056 3 300015310919 H

Ways to pay your nonenergy bill:

Same-day payment
ConsumersEnergy.com

Discover® MasterCard®
Visa® or eCheck

Same-day payment
866-329-9593

Discover® MasterCard®
Visa® or eCheck

By mail
Check, money order

Consumers Energy
Payment Center
P.O. Box 740309
Cincinnati, OH 45274-0309

In person
Cash, check, card
or money order

Varies by authorized payment location

Fee may apply

GO-READY Checklist
Natural Gas & Electric Request

Consumers Energy
Count on Us

Thank you for contacting Consumers Energy for your energy needs. This form is a requirement for scheduling your service installation. You will receive a contact from Consumers Energy one to two days before our scheduled arrival. If it is deemed any of the requirements are not met upon our arrival, Consumers Energy reserves the right to reschedule your job.

Please return completed Checklist to one of the following (e-mail preferred):
E-mail: poboxceservicerequest@cmsenergy.com **Fax:** 517-374-2424 **Mail:** Consumers Energy Service Request, 530 W Willow St, Lansing, MI 48906

Notification #: 1047912562 1047912548

Service Address: 2830 OAKLAND DR, KALAMAZOO

Please check all requirements on the checklist below before returning this document. Providing accurate information upon completion when submitting your form helps assure construction execution upon crew arrival.

	YES	N/A
1. Has your payment been submitted to Consumers Energy?	☐	☐
2. Has your gas meter location been clearly marked, and/or your electric meter socket properly installed at the agreed upon location?	☐	☐
3. Has your electric meter been inspected and approved by the local city/township inspector?	☐	☐
4. Is the site within 3 inches of final grade?	☐	☐
5. Is a 12' wide path clear of debris and construction equipment?	☐	☐
6. Site Ready Photo (subdivision services only). Include photo with Checklist.	☐	

Making Consumers Energy aware of any customer owned, underground facilities present, by clearly identifying and indicating the facility of their location reduces the risk of damages. Locate or expose any privately owned underground facilities or buried obstructions including, but not limited to:

	YES	N/A		YES	N/A
Septic tank (Existing or future)	☐	☐	Underground yard lighting	☐	☐
Drain field (Existing or future)	☐	☐	Sprinkler systems	☐	☐
Well (Existing or future)	☐	☐	Electronic dog fences	☐	☐

Other: ____________________

These facilities must be marked with stakes, spray paint or flags. Consumers Energy and/or its agents will not be held responsible for damage that occurs to customer-owned underground facilities that are not properly located and marked before service installation.

After services are installed, excavation will be backfilled. Final restoration is your responsibility.

Thank you for your partnership!

Printed Name: ____________________

Signature: ____________________ Date: ____________________

Form 1250 9-2015

Print

Commission Agenda Report

City of Kalamazoo

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

FROM: Clyde J. Robinson, City Attorney

PREPARED BY: Clyde J. Robinson, City Attorney

DATE: 6/21/2019

SUBJECT: Medical Marihuana Ordinance Amendment

RECOMMENDATION

It is recommended that the City Commission adopt an ordinance amending Chapter 20B addressing commercial medical marihuana facilities so as to reflect recent changes in State law and regulatory rules governing those facilities and extend the term of provisional certificates issued by the City.

BACKGROUND

On April 2, 2018, the City Commission adopted an ordinance authorizing medical marihuana facilities to operate in the City upon meeting local zoning requirements and securing both a State operating license and a City-issued permit. Since the adoption of the ordinance which created Chapter 20B several changes in the law have taken place; namely: 1) the issuance of finalized regulatory rules by the Michigan Department of Licensing and Regulatory Affairs governing medical marihuana facilities; 2) appellate case law authorizing outdoor grow operations; 3) adoption of the voter-initiated Michigan Regulation and Taxation of Marihuana Act which legalized recreational marihuana and industrial hemp; 4) legislative changes to the Medical Marihuana Facilities Licensing Act; and 5) the elimination by gubernatorial executive order of the Marihuana Licensing Board.

These changes have necessitated amendment to medical marihuana facilities ordinance so as to bring Chapter 20B into conformity with existing State law. Nearly all of the changes are minor in nature. The key substantive change is extending the term of the City-issued provisional certificates issued in 2018 for an additional year provided that the holder has attempted to make substantial progress toward licensure. Unlike several other communities, Kalamazoo did not require a prospective medical marihuana facility operator to be "prequalified" by the State before applying for a City permit. Instead, the City chose not to limit potential applicants, and issue "provisional certificates", which was good for a year, to applicants who otherwise qualified for a local permit. Once a State operating license was obtained, the provisional certificate would be surrendered, and a City permit issued.

Unfortunately, the State licensing process has been a long and drawn-out process which has placed those entities holding a City-issued provisional certificate in danger of losing the opportunity to operate a medical marihuana facility in Kalamazoo. Out of the 18 provisional certificates issued by the City Clerk, only 2 facilities have been able to obtain State licensure.

The proposed amendment to Chapter 20B would extend the life of the provisional certificates issued in 2018 for an additional year provided that the holder can demonstrate before the 1 year expiration, that 1) it has sought licensure prequalification from the State, and either 2) it has obtained local site plan approval from the City

Community Planning and Economic Development Department, or 3) the property in question could not be developed because it was subject to the 6-month Natural Features Protection Overlay moratorium.

The other significant change is repeal of Article V, which permitted the limited temporary authorization for existing facilities to remain in operation pending the State implementing its licensing system and administrative rules. Since this language is not longer necessary, it is being repealed.

POLICY CONSIDERATIONS

The proposed changes are consistent with IK 2025 Goals

COMMUNITY RESOURCES CONSULTED

None, the proposed changes are merely reflective of recent changes in State law.

FISCAL IMPACT

None

ALTERNATIVES

None, as most of the changes are being made to comply with changes in State law that have taken place since adoption of the ordinance. The City Commission could decide not to extend the life of City-issued provisional certificates, and re-open the licensing process. This is not recommended since the failure of provisional certificate holders to obtain State licensure has largely been the fault of the State in not being able to quickly process applications. With the elimination of the Marihuana Licensing Board in favor of an administrative process, it is expected that the pace of awarding State licenses will be accelerated.

ATTACHMENTS:

	Type	Description
🗋	Ordinances	Medical Marihuana Ordinance - Final

CITY OF KALAMAZOO, MICHIGAN
ORDINANCE NO. ________________

AN ORDINANCE TO AMEND CHAPTER 20B "MEDICAL MARIHUANA FACILITIES", OF THE CITY OF KALAMAZOO CODE OF ORDINANCES

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Articles I through IV to Chapter 20B, "Medical Marihuana Facilities of the Kalamazoo City Code of Ordinances is amended, and Article V is repealed to read as follows:

"**ARTICLE I General Provisions**

§ 20B-1. Title

This ordinance is to be known and may be cited as the City of Kalamazoo Medical Marijuana Facilities Ordinance.

§ 20B- 2. Purpose and Intent.

A. Purpose. The purpose of this Chapter is to implement the provisions of Public Act 281 of 2016, being the Michigan Medical Marihuana Facilities Licensing Act (MMFLA), so as to protect the public health, safety, and welfare of the residents and patients of the City by setting forth the manner in which medical marihuana facilities can be operated in the City. Further, the purpose of this Chapter is to:

(1) Authorize the establishment of medical marihuana facilities within the City and provide standards and procedures for the review, issuance, renewal, and revocation of City-issued permits for such facilities;

(2) Impose fees to defray and recover the cost to the City of the administrative and enforcement costs associated with medical marihuana facilities;

(3) Coordinate with laws and regulations that may be enacted by the State addressing medical marihuana; and

B. Legislative Intent. This Chapter authorizes the establishment of medical marihuana facilities within the City of Kalamazoo consistent with the provisions of the Michigan Medical Marihuana Facilities Act; and subject to the following:

(1) Use, distribution, cultivation, production, possession, and transportation of medical marihuana remains illegal under Federal law, and marihuana remains classified as a "controlled substance" by federal law. Nothing in this Chapter is intended to promote or condone the production, distribution, or possession of marihuana in violation of any applicable law. Nothing in this

ordinance is intended to grant immunity from any criminal prosecution under State or Federal law. This ordinance does not protect patients, caregivers, or the owners of properties on which a marihuana commercial operation is occurring from prosecution or having their property seized by federal law enforcement authorities.

(2) This Chapter is to be construed to protect the public over medical marihuana facility interests. The operation of a licensed medical marihuana facility is a revocable privilege and not a right in the City. Nothing in this Chapter is to be construed to grant a property right for an individual or business entity to engage, obtain, or have renewed, a City-issued permit to engage in the use, distribution, cultivation, production, possession, transportation or sale of medical marihuana as a commercial enterprise in the City.

(3) Any individual or business entity which purports to have engaged in the use, distribution, cultivation, production, possession, transportation or sale of medical marihuana as a commercial enterprise in the City either prior to or after the enactment of this ordinance without obtaining the required authorization required by this Chapter is deemed to be an illegally established use, and as such is not entitled to legal nonconforming status under this Chapter, the City Zoning Code, or State statutory or common law.

(4) Nothing in this ordinance is intended to grant immunity from criminal or civil prosecution, penalty or sanction for the cultivation, manufacture, possession, use, sale, distribution or transport of marihuana in any form, that is not in strict compliance with the Michigan Medical Marihuana Act, the Medial Marihuana Facilities Licensing Act, the Marihuana Tracking Act, and all applicable rules promulgated by the State of Michigan regarding medical marihuana. Strict compliance with any applicable State law or regulation is deemed a requirement for the issuance or renewal of any permit issued under this Chapter, and noncompliance with any applicable State law or regulation shall be grounds for revocation or nonrenewal of any permit issued under the terms of this Chapter.

C. Indemnification of City

(1) By accepting a permit issued pursuant to this Chapter, the holder waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of medical marihuana facility owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(2) By accepting a permit issued pursuant to this Chapter, the holder agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on

account of any claim of diminution of property value by a property owner whose property is located in proximity to a licensed operating facility, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a medical marihuana facility or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1964(c) .

D. Reservation of Legislative Prerogative

(1) The City Commission reserves the right to amend or repeal this ordinance in any manner, including, but not limited to the complete elimination of any type or number of medical marihuana facilities authorized to operate in the City.

(2) Nothing in this ordinance may be held or construed to grant or "grandfather" any medical marihuana facility a vested right, license, permit or privilege to continued operations within the City.

(3) Given the adoption of 2018 Initiated Law #1, which legalized the possession and use of marihuana by persons age 21 and older, Section 199 of the City Charter providing for the establishment of medical cannabis dispensaries, by its own terms, "shall be null and void". Therefore, it is determined that there is no rational basis to treat or make allowances that treat a "medical cannabis dispensary" apart from a "provisioning center".

§ 20B-3 Definitions

Unless the context requires a different meaning, any term used in this Chapter that is defined by the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, or the Administrative Rules promulgated by the Michigan Department of Licensing and Regulatory Affairs addressing medical marihuana shall have the definition given in those Acts and Rules.

"Applicant" means a person who applies for a City-issued permit to operate a marihuana facility in accordance with the terms of this Chapter and the City zoning code. With respect to disclosures in an application and for purposes of ineligibility for a permit, the term applicant" includes a managerial employee of the applicant, any person who holds any direct or indirect ownership interest of more than 10% in the applicant, and the following for each type of applicant:

(A) For an individual or sole proprietorship: the proprietor and spouse.

(B) For a partnership and limited liability partnership: all partners and their spouses. For a limited partnership and limited liability limited partnership: all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the partnership, and their spouses. For a limited liability company: all members and managers, not including a member holding a direct or indirect ownership interest of 10% or less and who does not exercise control over or participate in the management of the company, and their spouses.

(C) For a privately held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(D) For a publicly held corporation: all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all stockholders, not including those holding a direct or indirect ownership interest of 10% or less, and their spouses.

(E) For a multilevel ownership enterprise: any entity or person that receives or has the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.

(F) For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or the bylaws and their spouses.

"Department" means the Michigan department of licensing and regulatory affairs, or its successor agency.

"Grower" means a licensee that is a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.

“Industrial Hemp” means that term defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

“Industrial Hemp Research and Development Act” means Public Act 547 of 2014, as may be amended

"Licensee" means a person holding a state operating license.

"Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL 333.7106.

“Marihuana commercial operation” means any and all of the following marihuana facilities, whether operated for profit or not for profit:

(A) a grower

(B) a processor

(C) a secure transporter

(D) a provisioning center

(E) a safety compliance facility

"Marihuana facility" or “facility” means a location at which a licensee is licensed to operate under the MMFLA and this Chapter.

"Marihuana plant" means any plant of the species Cannabis sativa L. but does not include industrial hemp.

"Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation.

"Michigan medical marihuana act” or “MMMA” means 2008 IL 1, MCL 333.26421 et seq., as may be amended.

“Michigan medical marihuana facilities licensing act” or “MMFLA” means Public Act 281 of 2016, MCL 333.27101 et seq., as may be amended.

“Operating permit” or “permit” means the permit issued pursuant to this chapter authorizing the operation of a medical marihuana facility in the City.

“Permitee” means a person who holds a permit issued by the City pursuant to this Chapter.

"Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity and includes persons defined as a “true party of interest” as that term is used at Section 404 of the MMFLA, MCL 333.27404 and persons defined as having a “beneficial interest” as that term is used at Section 303(1)(g) of the MMFLA, MCL 333.27303(1)(g).

"Processor" means a licensee that is a commercial entity that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center or another processor. A processor is not prohibited from handling, processing, marketing or brokering industrial hemp pursuant to the industrial hemp research and development act.

"Provisioning center" means a licensee that is a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers and includes medical cannabis dispensaries. A noncommercial location used by a registered primary caregiver to assist a qualifying patient connected to the caregiver through the Department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this Chapter.

"Registered primary caregiver" or “caregiver” means a primary caregiver who has been issued a current registry identification card under the MMMA.

"Registered qualifying patient" or “patient” means a qualifying patient who has been issued a current registry identification card under the MMMA or a visiting qualifying patient as that term is defined in the MMMA.

"Rules" means the general administrative rules promulgated and from time to time amended by the Department in consultation with the Board to implement the MMFLA.

"Safety compliance facility" means a licensee that is a commercial entity that takes marihuana from a marihuana facility or receives marihuana from a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility. A safety compliance facility may take or receive industrial hemp for testing pursuant to the industrial hemp research and development act.

"Secure transporter" means a licensee that is a commercial entity that stores marihuana and transports marihuana between marihuana facilities for a fee.

" State operating license" or, "license" means a license that is issued by the Department under the MMFLA that allows the licensee to operate a marihuana commercial operation, as specified in the license

ARTICLE II Licensing of Medical Marihuana Facilities

§20B-4 Number of Permitted Facilities

The maximum number of each type of medical marihuana commercial entity permitted in the City is as follows:

Type of Facility	Number
Grower	no limit
Processor	no limit
Secure Transporter	no limit
Provisioning Center	no limit
Safety Compliance Facility	no limit

§ 20B-5 License and Annual Fee Required; Exception

A. No person shall establish or operate a medical marihuana commercial facility in the City without first having obtained a permit from the City and a State operating license for each such facility to be operated. Permit and license certificates shall be kept current and publicly displayed within the facility. Failure to maintain or display current State and City certificates shall be a violation of this Chapter.

B. An annual nonrefundable fee to defray the administrative and enforcement costs associated with medical marihuana facilities located in the City of not more than $5,000 per licensed facility as set by resolution adopted by the City Commission

C. The annual nonrefundable fee required under this Section shall be due and payable with the application for a permit and upon the application for renewal of any such permit under this Chapter. The permit and fee requirements of this Chapter apply to all facilities, whether operated for profit or not for profit.

D. The permit fee requirement set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any state regulatory agency, or by City ordinance, including, by way of example, any applicable fees for site plan review, zoning review, inspections, or building permits.

E. The issuance of any permit pursuant to this Chapter does not create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution, or possession of marihuana under federal law.

F. A separate permit shall be required for each premise from which a medical marihuana facility is operated. Operation of a grower and processor facility at the same location is authorized provided that each facility is separately licensed and permitted. Operation of a provisioning center at the same location as a grower or processing facility is not authorized.

G. This Chapter is not applicable to a home occupation operating in accordance with §4.3 G. 16 of the City zoning code.

§ 20B- 6 Location Criteria.

A. No medical marihuana facility shall be eligible to be issued a permit unless at the time an application for a medical marihuana facility operating permit is submitted the location of the proposed facility complies with the requirements set forth in Section 4.2 AA of the City of Kalamazoo Zoning Ordinance as required for the specific type of medical marihuana facility for which the permit is being sought.

B. Mobile marihuana facilities and drive-through operations are prohibited.

C. A licensee shall not operate a marihuana facility at any place in the City other than the address provided in the application on file with the City Clerk. A permit issued under this Chapter may be transferred to a different location upon receiving written approval from the City Clerk. In order to request approval to transfer the location of a permit, the licensee must make a written request to the City Clerk, indicating the current licensed location and the proposed licensed location. Upon receiving the written request, the City Clerk shall forward a copy of the request to affected service areas and departments of the City to determine whether the proposed location complies with all applicable laws, rules and regulations. No permit transfer will be approved unless the proposed location meets the standards identified in this Chapter and the City zoning code.

§ 20B-7 General Permit Application Requirements

A. A person seeking a permit pursuant to the Medical Marihuana Facilities Licensing Act and the provisions of this Chapter shall submit an application in writing to the City Clerk on forms provided by the City. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for costs associated with the processing of the application. In addition, the applicant shall present a suitable copy of government-issued photographic identification to accompany the application.

B. The applicant shall also provide the following information, under the penalty of perjury, on the City-issued form approved by or acceptable to, the City Clerk and Public Safety Chief. Such information is required for the applicant, the proposed manager of the marihuana facility, and all persons who are true parties of interest in the marihuana facility that is the subject of the application:

(1) If the applicant is an individual or sole proprietorship, the proprietor and their spouse, if any, shall provide their name, address, date of birth, business address, business telephone number, email address, social security number, and, if applicable, federal tax identification number;

(2) If the applicant is not an individual or sole proprietorship, information regarding the business entity, including, without limitation, the name and address of the entity, website address, (if any), type of business organization, proof of registration with, or a certificate of good standing from the State of Michigan, as applicable, and the names, dates of birth, addresses, email addresses, phone numbers of each true party of interest, and the federal tax identification number of the business entity;

(3) The identity of every person having any ownership interest in the applicant with respect to which the license is sought.

(4) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a marihuana facility;

(5) A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to possess, or an option reflecting the applicant's right to purchase or lease, the proposed licensed premises;

(6) A description of the type of the proposed marihuana commercial operation and its physical address;

(7) A "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building floor plan and layout, all entryways, doorways, or passage ways, and means of public entry and exits to the proposed licensed premises, loading zones, available onsite parking spaces, fencing at the premises, and all areas in which medical marihuana will be stored, grown, manufactured or dispensed;

(8) A lighting plan showing the lighting outside of the medical marihuana facility for security purposes and compliance with applicable City outdoor lighting requirements;

(9) A staffing plan which describes the anticipated or actual number of employees, including an estimate of the number and type of jobs that the facility is expected to create, the amount and type of compensation (including benefits) expected to be paid for such jobs;

(10) An explanation, with supporting factual data, of the economic benefits to the City and the job creation for local residents to be achieved by the facility, including plans for community outreach and worker training programs, through the grant of a medical marihuana facility license;

(11) A statement that neither the applicant nor any true party of interest is in default to the City for any property tax, special assessment, utility charges, fines, fees or other financial obligation owed to the City;

(12) A statement that the applicant has reviewed and agrees to conform its hiring and public accommodation practices to the City's anti- discrimination ordinance provisions;

(13) A statement that neither the applicant nor any true party of interest is ineligible from holding a license for any of the reasons set forth at Section 402 of the MMFLA, MCL 333.27402;

(14) Attestation that the applicant consents to inspections, examinations, searches and seizures required or undertaken pursuant to enforcement of this ordinance; and

(15) Any additional information that the City Clerk or Public Safety Chief reasonably determines to be necessary in connection with the investigation and review of the application.

C. Upon receipt of a completed application, the City Clerk may circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

D. If the City Clerk identifies or is informed of a deficiency in an application, the applicant shall have one period of five (5) business days to correct the deficiency after notification by the City Clerk.

§ 20B-8 Denial of Application

A. The City Clerk shall reject any application that does not meet the requirements of the MMFLA, the Rules, or this Chapter. The City Clerk shall reject any application that contains any false, misleading or incomplete information.

B. An applicant whose application is rejected or denied because of missing, incomplete, erroneous, false, or misleading information, or because of a lack of submission of the full amount of the fees due, does not have a right to appeal the decision.

§ 20B-9 Issuance of Provisional Approval Certificate

A**.** Within 35 days following the adoption of this ordinance the City Clerk shall establish an initial application period of at least 21 days to accept permit applications for licensed medical marihuana facilities. Initial applications following the adoption of this ordinance for grower, processor, secure transporter, safety compliance and provisioning center facilities whose inspection, background checks, and all other information available to the City verify that the applicant has submitted a full and complete application, has made or has secured permits for making improvements to the business location consistent with the type of facility applied for, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, will be reviewed by the office of the City Clerk for completeness and compliance with the requirements of this Chapter. The City Clerk shall issue a provisional medical marihuana facility approval certificate to each applicant whose application is complete and in compliance with the provisions of this Chapter and applicable State-issued regulations.

B. Complete applications for a marihuana facility operating permit determined to be in full compliance with the requirements of this Chapter shall be issued a provisional medical marihuana facility approval certificate in accordance with the procedures specified in this Section.

C. The City Clerk shall issue a provisional medical marihuana facility approval certificate if the inspection, background checks, and all other information available to the City verify that the applicant as a grower, processor, safety compliance facility, secure transporter has submitted a full and complete permit application, complies with applicable zoning and location requirements, and is prepared to operate the business as set forth in the application, all in compliance with the City Code of Ordinances and any other applicable law, rule, or regulation.

D. A provisional medical marihuana facility approval certificate only means that the applicant has submitted a valid application for a marihuana facility operating permit and is eligible to receive the appropriate marihuana facility license from the Department. The applicant shall not locate or operate a marihuana facility in the City without obtaining a State operating license approved by and issued by the Department. A provisional certificate issued by the City will expire and be void after 1 year, if State approval is not diligently pursued to completion by the applicant, or on the date that State approval is denied by a final order to the applicant, whichever first occurs; provided however, due to the deliberateness of the State in issuing operating licenses, provisional certificates issued by the City Clerk prior to January 1, 2019 will be extended for a period of 1 year if on the date the provisional certificate would otherwise expire, the holder of the provisional certificate has been issued a notice of prequalification status by the Department or a denial of prequalification status by the Department is under appeal, and either: (1) the site plan for the proposed facility has been approved by the Community Planning and Economic Development Department, or (2) the site of the proposed facility for which the provisional certificate was issued was subject to a City-imposed moratorium on development from December 3, 2018 to June 3, 2019.

E. Within 30 days from the issuance of a provisional medical marihuana facility approval certificate by the City Clerk, the applicant must submit proof to the City Clerk that the applicant has submitted a partial application with the Department for prequalification for a State operating license or has submitted full application for such license. If the applicant fails to submit such proof, then the provisional approval will be cancelled by the City Clerk.

F. If a provisionally approved applicant is denied prequalification for a State operating license or is denied on full application for a state operating license, then the provisional approval will be cancelled by the City Clerk and the provisional facility approval certificate will be made available to the next available qualified applicant under the applicable provision of this Section.

G. Provisional certificates are not transferable to another person or entity.

20B-10 Issuance of City Marihuana Facility Operating Permit

A. An applicant holding an unexpired provisional certificate issued pursuant to this Chapter and for which a marihuana facility state operating license has been issued shall provide proof of same to the City Clerk.

B. An inspection of the proposed medical marihuana facility by the City shall be required prior to issuance of the City operating permit. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any medical marihuana, and prior to the opening of the business or commencement of operations. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of this Chapter and any other applicable law, rule, or regulation.

C. After verification that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of this Chapter and any other applicable law, rule, or regulation, and the issuance of a permanent certificate of occupancy for the facility, the City Clerk shall issue a City medical marihuana operating permit for a term of one (1) year. The City-issued permit shall be prominently displayed within the facility.

D. Maintaining a valid marihuana facility license issued by the State is a condition for the issuance and maintenance of the City marihuana facility operating permit issued under this Chapter and the continued operation of any medical marihuana facility.

E. Proof of Insurance.

(1). A permitee shall at all times maintain full force and effect for duration of the permit, worker's compensation insurance as required by state law, and general liability insurance with minimum limits of $1,000,000 per occurrence and a $2,000,000 aggregate limit issued from a company licensed to do business in Michigan having an AM Best rating of at least B++. A permittee shall provide proof of insurance to the City Clerk in the form of a certificate of insurance evidencing the existence of a valid and effective policy which discloses the limits of each policy, the name of the insurer, the effective date and expiration date of each policy, the policy number, and the names of the additional insureds. The policy shall name the City of Kalamazoo and its officials and employees as additional insureds to the limits required by this section. A permittee or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven days of receipt of insurer's notification to that effect. The permittee shall obtain and submit proof of substitute insurance to the City Clerk within 5 business days in the event of expiration or cancellation of coverage.

(2) A secure transporter shall provide proof of no-fault automobile insurance with a company licensed to do business in Michigan with limits of liability not less than $1,000,000 per occurrence combined single limit for bodily injury and property damage, vehicle registration, and registration as a commercial motor vehicle for all vehicles used to transport marihuana or marihuana-infused product.

(3) Any failure to maintain or lapse in the insurance coverage required by this Chapter will be grounds for revocation of the City-issued operating license.

F. A condition of the issuance of a medical marihuana operating permit includes, at a minimum, operation of the business in compliance with all the plans and the information provided to the City as part of the application. A permitee must update any change in the information provided to the City as part of the application within five (5) business days of such change during the term of the permit. The failure to timely update a change in information will be grounds for suspension or revocation of the operating permit.

20B-11 Permit Forfeiture

In the event that a medical marihuana facility does not commence and maintain operations within one year of issuance of a City operating permit, the permit shall be deemed forfeited; the business may not recommence operations and the permit is not eligible for renewal.

§ 20B-12 Permit Renewal

A. A valid marihuana facility operating permit may be renewed on an annual basis by a renewal application upon a form provided by the City and payment of the annual license fee set by City Commission resolution. An application to renew a marihuana facility operating permit shall be filed no sooner than 90 days and at least 60 days prior to the date of its expiration. The failure to timely file for renewal is sufficient grounds to deny renewal of a permit to operate a medical marihuana facility in the City and is not subject to appeal.

B. Prior to the issuance of a renewed marihuana facility permit by the City, the premises shall be inspected to assure that it and its systems are in compliance with the requirements of this Chapter.

C. In determining whether to grant a renewal of a permit, the members of the City's Economic Development Corporation board will evaluate the permit holder's compliance with the statements it provided with its initial application and submission with its request for renewal of the following information:

(1) The facility's staffing plan which describes the actual number of employees, including the number and type of jobs that the facility has created, and the amount and type of compensation (including benefits) paid for such jobs;

(2) An explanation, with supporting factual data, of the economic benefits to the City and the job creation for local residents achieved by the facility, results of efforts for community outreach and worker training programs;

(3) A statement that the facility is not in default to the City for any property tax, special assessment, utility charges, fines, fees or other financial obligation owed to the City;

(4) A statement that the hiring and public accommodation practices of the facility conforms to the City's anti- discrimination ordinance provisions;

D. If a licensee demonstrates compliance with the requirements for renewal of an operating permit, the City Clerk shall renew the existing permit for a period of one (1) year, on the condition that the State operating license for the facility is renewed.

§20B-13 Transfer of Permit

A. A medical marihuana business permit is valid only for the owner named thereon, the type of business disclosed on the application for the permit, and the location for which the permit is issued.

B. Each operating permit is exclusive to the permitee and a permittee or any other person must apply for a permit with the City Clerk before a permit is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest in a permit without prior application for a City operating permit with the City Clerk is grounds for suspension or revocation of the existing permit.

§ 20B-14 Permit as Revocable Privilege

An operating permit granted by this Chapter is a revocable privilege granted by the City and is not a property right. Granting a permit does not create or vest any right, title, franchise, or other property interest.

§ 20B-15 Nonrenewal, Suspension or Revocation of Permit.

A. The City may, after notice and hearing, suspend, revoke or refuse to renew a permit for any of the following reasons:

(1) the permit holder, or his or her agent, manager or employee, has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Chapter or with any applicable state or local law or regulation;

(2) the permit holder, or its agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license;

(3) the Economic Development Corporation board determined that the permit holder did not meet or failed to comply with one or more of the requirements set forth at Section 20B-12C.

(4) the marihuana commercial entity has been operated in a manner that adversely affects the local public health, safety or welfare; or

(5) the permit holder failed to timely submit all necessary documents and or fees to renew the City-issued permit or State operating license.

B. Evidence to support a finding under this Section may include, without limitation, a continuing pattern of conduct, a continuing pattern of drug-related criminal conduct within the premises of the marihuana facility or in the immediate area surrounding such business, a continuing pattern of criminal conduct directly related to or arising from the operation of the marihuana facility, or an ongoing nuisance condition emanating from or caused by the marihuana facility. Criminal conduct is limited to the violation of a state law or regulation or city ordinance.

C. Except as otherwise provided in this Chapter, the Planning Commission shall hear and decide questions that arise in the administration of this Chapter, including appeals of suspension and revocations of City operating permits. The concurring vote of a majority of the members of the Planning Commission is necessary to reverse an order, requirement, decision, or determination of an administrative official in the application of this Chapter. The decision of the Planning Commission is final. This section is not to be construed to grant the Planning Commission authority to hear any matter that is within the powers and duties of the Zoning Board of Appeals.

ARTICLE III Specific Marihuana Facility Requirements

§ 20B-16 Grower Classes

A grower may not hold more than one class of grower State operating license. A grower may hold more than one Class C grower license at a single location.

§20B-17 Separation of Licensed Premises

A grower facility and processor facility in the same location are separate medical marihuana commercial operations requiring separate licenses and separate permits. In addition to all other application requirements for separate facilities, each business, if sharing a building or structure, shall be distinctly partitioned from each other from floor to roof, have separate operations, ventilation, security and fire suppression systems, and separate entrances and exits.

§ 20B-18 Secure Transporter

A. A secure transporter which operates from a marihuana facility located within the City shall secure a license from the City. A State-licensed secure transporter which does not have a facility located in the City, may, without securing a license from the City, operate on public streets and highways within the City.

B. A driver transporting marihuana or marihuana-infused products must possess a valid chauffeur's license issued by the State.

C. Each vehicle engaged in the transportation of marihuana or marihuana-infused products must always be operated by a 2-person crew with at least 1 individual remaining with the vehicle.

D. A secure transporting vehicle must not bear any markings or any other indication that it is carrying marihuana or marihuana-infused products.

§ 20B-19 Provisioning Centers

A. The licensee, manager, operator and employees of a provisioning center shall strictly comply with all rules addressing security (including but not limited to an operating video surveillance system), storage of marihuana and marihuana-infused products to prevent direct customer access and use of a separate room as a point of sale area.

B. It is unlawful for the licensee, manager, operator or employees of a provisioning center to:

(1) Permit the sale, consumption, or use of alcohol beverages or tobacco products on the licensed premises or the consumption or service of food on the licensed premises;

(2) Sell, give, dispense or otherwise distribute medical marihuana, marihuana-infused products, or medical marihuana paraphernalia from any outdoor location;

(3) Offer or distribute samples of marihuana or marihuana-infused products to a consumer free of charge.

(4) Permit the use or consumption of marihuana or marihuana-infused products on the licensed premises.

(5) Operate a licensed provisioning center at any time other than between the hours of 7:00 a.m. and 9:00 p.m. daily.

(6) Keep or grow marihuana plants within the provisioning center.

C. Registered patients and registered primary caregivers with valid registry cards are permitted in a dedicated point of sale area; a separate waiting are may be created for visitors not authorized to enter the marihuana facility. Provisioning centers shall be wheelchair accessible and disability accommodations shall be provided to caregivers or patients upon request.

D. A provisioning center may engage in the home delivery of marihuana and marihuana-infused products to registered qualifying patients at the patient's home address in strict compliance with Department-approved procedures and rules.

E. A provisioning center may engage in the sale of industrial hemp to a registered qualifying patient in compliance with the standards, procedures, and requirements promulgated by the Department.

ARTICLE IV General Requirements

§ 20B-20 Compliance with Rules; Inspections

A. A permittee shall strictly comply with the rules that may from time to time be promulgated by the Department.

B. All marihuana commercial operations shall obtain all other required permits or licenses related to the operation of the marihuana facility, including, without limitation, any development approvals or building permits required by any applicable code or ordinance.

C. Any failure by a permittee to comply with Department rules or the provisions of this Chapter is a violation of this Chapter and any infraction or violation, however slight, is sufficient grounds for suspension and revocation of licensure under this Chapter.

§ 20B-21 Signage and Advertising.

A. All signage and advertising for a medical marihuana facility shall comply with all applicable provisions of this Code and the City Zoning Code. In addition, it shall be unlawful for any licensee to:

> (1) Use advertising material that is misleading, deceptive or false or that, as evidenced by the content of the advertising material or by the medium or the manner in which the advertising material is disseminated, is designed to appeal to minors aged 17 or younger;
>
> (2) Advertise in a manner that is inconsistent with the medicinal use of marihuana and marihuana-infused products or use advertisements that promote medical marihuana or marihuana-infused products for recreational or any use other than for medicinal purposes by patients and caregivers.

B. Only one sign per street frontage, which complies with the size restrictions set forth in the City zoning code, is permitted for a provisioning center or safety compliance center. Neon or gas lighted and flashing signs are prohibited

§ 20B-22 Security Requirements.

A. Security measures at all licensed premises shall comply with the requirements of all applicable rules and regulations promulgated by the Department.

B. Prior to commencing operations a description of the security plan for the facility shall be submitted to the Department of Public Safety. The security plan shall include details of a video surveillance system to be employed at the facility and procedures that meet or exceed applicable state rules addressing security.

C. The security system, shall be maintained in good working order and provide continuous twenty-four hours per day recorded coverage. A separate security system is required for each facility.

§ 20B-23Fire Suppression; Hazardous Materials

A. A facility shall have installed a fire suppression system and fire alarm system for the facility which meets the requirements imposed by applicable law, rule, or regulation. Unless a higher standard is required by applicable law or regulation, there must be a minimum of a one-hour fire separation between a medical marihuana business and any adjacent business.

B. A description of all toxic, flammable, or other materials, including all chemical compounds and pesticides used for cultivation, processing or testing of marihuana that will be used or kept at the facility, specifying the location of such materials on the premises, and how such materials will be stored and disposed of shall be filed with the Fire Marshal prior to the facility commencing operations.

§ 20B-24 Waste Management

A. A facility shall institute and employ a waste management protocols and practices that comply with applicable rules and regulations that includes a plan for disposal of any medical marihuana or medical marihuana-infused product that is not sold to a patient or primary caregiver, any portion of a plant or the residue from any grow, production or testing process that precludes any portion being disposed of from being possessed or ingested by any person or animal.

B. If determined as being necessary by the Director of Public Services, wastewater generated from the cultivation or processing of marihuana or marihuana-infused products may require pre-treatment before introduction in the City wastewater system.

§ 20B-25 Visibility of Activities.

A. All activities of marihuana commercial operations shall be conducted indoors and out of public view, except cultivation may occur in an outdoor area provided that the area is contiguous with the facility building, fully enclosed by fences or barriers that block outside visibility of the marihuana plants from public view, with no marihuana plants growing above the height of the fence or barrier and the fences are secured and only accessible to authorized persons and emergency personnel .

B. No medical marihuana, marihuana-infused product, or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

§ 20B-26 Odor Control

A. Growers, processors, and safety compliance facilities are required to install and maintain in operable condition an appropriate exhaust ventilation system which precludes the emission of detectable marihuana odor resulting from any grow or production process or operations from the premises. Exhaust and ventilation equipment must be installed, operated, and maintained in compliance with the Michigan mechanical code, R 408.30901 *et seq.*

B. No medical marihuana facility shall permit the emission of marihuana odor resulting in detectable odors that leave the facility premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of another's property.

C. Whether a marihuana odor emission interferes with the reasonable and comfortable use and enjoyment of a property shall be measured against the objective standards of a reasonable person of normal sensitivity.

§ 20B-27 Reports of Crime

Reports of all criminal activities or attempts of violation of any law at the medical marihuana facility or related thereto shall be reported to Kalamazoo Department of Public Safety within twenty-four (24) hours of occurrence, or its discovery, whichever is sooner. The failure to timely report criminal activity is a violation of this Chapter and may result in sanctions up to and including the suspension, revocation or non-renewal of the facility's City operating license.

§ 20B-28 Inspection of Licensed Premises

A. During all business hours and other times when the premises are occupied by the licensee or an employee or agent of the licensee, all licensed premises shall be subject to examination and inspection by Department of Public Safety and all other City departments for the purpose of investigating and determining compliance with the provisions of this Chapter and any other applicable state and local laws or regulations.

B. Consent to Inspection. Application for a medical marihuana business license or operation of a medical marihuana business, or leasing property to a medical marihuana business, constitutes consent by the applicant, and all owners, managers, and employees of the business, and the owner of the property to permit the City manager to conduct routine examinations and inspections of the medical marihuana business to ensure compliance with this chapter or any other applicable law, rule, or regulation. For purposes of this Chapter, examinations and inspections of medical marihuana businesses and recordings from security cameras in such businesses are part of the routine policy of enforcement of this chapter for the purpose of protecting the public safety, individuals operating and using the services of the medical marihuana business, and the adjoining properties and neighborhood.

C. Application for a medical marihuana business license constitutes consent to the examination and inspection of the business as a public premise without a search warrant, and consent to seizure of any surveillance records, camera recordings, reports, or other materials required as a condition of a medical marihuana license without a search warrant.

D. A licensee, or an employee or agent of the licensee, shall not threaten, hinder or obstruct a law enforcement officer or a City inspector or investigator in the course of making an examination or inspection of the licensed premises and shall not refuse, fail, or neglect to cooperate with a law enforcement officer, inspector, or investigator in the performance of his or her duties to enforce this Chapter, the MMFLA, or applicable state administrative rules.

§ 20B-29 Other laws remain applicable.

To the extent the State adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marihuana, the additional or stricter regulation shall control the establishment or operation of any marihuana commercial entity in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any permit under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any permit issued hereunder.

§ 20B- 30 Grant of Administrative Authority.

The City Clerk is granted the power and duty to fully and effectively implement and administer the permit application process and issuance of Provisional Approval Certificates and Operating Permits issued by the City under this Chapter. The City Clerk, after consultation with other City departments, shall promulgate such rules as necessary to implement and administer this Chapter.

§ 20B- 31 Violations and Penalties.

A. Any person, including, but not limited to, any licensee, manager or employee of a marihuana commercial operation, or any customer of such business, who violates any of the provisions of this Article, shall be responsible for a municipal civil infraction punishable by a civil fine of $500, plus court-imposed costs and any other relief that may be imposed by the court for the first violation; and $1,000, plus court-imposed costs and any other relief that may be imposed by the court for a subsequent violation committed within one (1) year of any previous offense.

B. In addition to any civil fine imposed for a municipal civil infraction violation, a violation of this Chapter, shall also be sufficient grounds the suspension, revocation or non-renewal of the facility's City operating permit.

C. In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Chapter, the City Attorney is authorized to seek such other relief that may be available and provided by law or equity, including filing a public nuisance action or seeking injunctive relief against a person alleged to be in violation of this Chapter or the City zoning code.

ARTICLE V Temporary Operation of Medical Marihuana Facilities is repealed in its entirety. "

Section 2. Repealer. All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed; specifically, Ordinance No. 1954 is repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the remaining portions of this ordinance.

Section 4. Effective Date. Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage and only if an ordinance is adopted by the City Commission amending the City Zoning Code to permit the location of medical marihuana facilities in the City.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _______________, 2019. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976, M.C.L. § 15.261 et. seq). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

____
Bobby J. Hopewell, Mayor

____
Scott A. Borling, City Clerk

Commission Agenda Report

City of Kalamazoo

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

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

REVIEWED BY: Steve Vicenzi, Management Services Director / CFO

PREPARED BY: Stephanie McGowan, City Treasurer

DATE: 6/20/2019

SUBJECT: Authorization to Procure and Perform Cash Management and Investments with Approved Financial Institutions.

RECOMMENDATION

It is recommended that the City Commission adopt a resolution designating financial institutions as approved depositories for the City and authorizing the positions of Management Services Director/CFO, City Treasurer, and the Assistant City Treasurer to execute and sign agreements to procure various cash management services of financial institutions and to provide specific operational and procedural information to such institutions as may be required.

BACKGROUND

The City Charter identifies officers of the City, namely the Director of Finance and City Treasurer, to establish and maintain accounts and services with financial institutions. The City utilizes banking and investments services that include online banking and reporting, wire transfers, direct deposit of payroll, credit card processing, ACH payments, sweep accounts, and other services generally defined as cash management services. The purpose of this resolution is to provide assurances to our financial institutions that the City staff with which they are dealing are authorized to act on behalf of the City.

The positions and individuals listed in the resolution are consistent with current practices and this request is in compliance with the City Charter and Banking and Investment Policy. With recent staff changes in the Management Services Department, the individuals named in this resolution, and their signatures, must be updated and approved by the City Commission. Individual signatures in the resolution will be obtained by the City Clerk upon approval.

The current resolution includes banks and credit unions with an actual presence in the City of Kalamazoo, institutions used by Kalamazoo County, and Michigan CLASS a local government investment pool. Bank ratings, evaluations and financial security will be considered before city funds are deposited or invested with any institution.

FISCAL IMPACT

City Commission approval of the attached resolution will allow the City to continue cash management services with its current institutions. It will also allow the City to join Michigan CLASS and support other local institutions that meet the guidelines of the banking and investment policy for financial security, while maintaining a competitive rate of return on investment.

ALTERNATIVES

The Commission could choose not to adopt the resolution. This would limit our depositories to the financial institutions included in the cash management resolution approved in 2015 and restrict current city staff from procuring and performing cash management services.

ATTACHMENTS:

	Type	Description
🗋	Resolution	Approved Institutions Resolution

CITY OF KALAMAZOO, MICHIGAN

RESOLUTION NO. _______

A RESOLUTION DESIGNATING APPROVED FINANCIAL DEPOSITORIES AND AUTHORIZING CERTAIN CITY OFFICIALS TO ACT ON BEHALF OF THE CITY IN SECURING AND MANAGING CASH AND INVESTMENT SERVICES OFFERED BY FINANCIAL INSTITUTIONS AND REQUIRED BY THE CITY

Minutes of a regular meeting of the City Commission of the City held on the ____day of __________, 2019, at or after or after 7:00 o'clock p.m., local time, at City Hall.

PRESENT, Commissioners:

ABSENT, Commissioners:

The following preamble and resolution was offered by ________________________ and supported by ________________________.

WHEREAS, The City Charter identifies officers of the City, namely the Director of Finance and City Treasurer, to establish and maintain accounts with financial institutions as determined by the City Commission

WHEREAS, The City must perform financial transactions to maintain its day to day operations and establish procedures for the same

WHEREAS, The City is required to execute and sign agreements with financial institutions to procure and perform various cash management services

NOW THEREFORE, BE IT RESOLVED that the positions of Management Services Director/Chief Financial Officer (aka Finance Director), City Treasurer and Assistant City Treasurer are authorized to execute and sign agreements that may be required to procure various cash management services required by the City.

BE IT FURTHER RESOLVED that the positions of Management Services Director/Chief Financial Officer (aka Finance Director), City Treasurer and Assistant Treasurer are authorized to provide financial institutions with specific operational and procedural information as may be required in the daily execution of the various cash management services provided by the financial institution to the City of Kalamazoo.

BE IT FURTHER RESOLVED that the following financial institutions are designated as approved depositories for the City:

Bank of America	Mercantile Bank	Chemical Bank
Comerica Bank	Fifth Third Bank	JP Morgan Chase
Huntington National Bank	1st Source Bank	PNC Bank
Citizens Bank	First National Bank of MI	Flagstar Bank, FSB
Old National Bank	Southern Michigan Bank & Trust	Honor Credit Union
Omni Credit Union	First Community Federal Credit Union	Lake Michigan Credit Union
Allegis Credit Union	KALSEE Credit Union	Michigan CLASS
SunTrust Robinson Humphrey		

BE IT FURTHER RESOLVED that a certified copy of these resolutions and a certification of the names, titles and specimen signatures of the persons holding the positions authorized to act on behalf of the City shall be furnished to the financial institution and that the financial institution is authorized to rely on these resolutions and such certification until written notice of any change therein shall be received by an appropriate officer of the financial institution.

BE IT FURTHER RESOLVED that changes to the authorized signatures certified below may be made by the City of Kalamazoo by sending a letter to the financial institution setting forth the change and be certified by the City Clerk.

I further certify that set forth below is the name, title and specimen signature of each person presently holding the positions authorized above to act on behalf of the City and that such person is a duly acting officer of the City with the title indicated.

Name	**Title**	**Signature**
Steve Vicenzi	Management Services Dir./CFO	______________________
Stephanie McGowan	City Treasurer	______________________
Andrew Falkenberg	Assistant City Treasurer	______________________

The above resolution was offered by ___________________________ and supported by _______________________________

AYES, Commissioners:

NAYS Commissioners:

ABSTAIN Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _______________________, 2019. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

____
Scott A. Borling, City Clerk

Commission Agenda Report
City of Kalamazoo

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

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

REVIEWED BY: Steve Vicenzi, Management Services Director / CFO

PREPARED BY: Stephanie McGowan, City Treasurer

DATE: 6/20/2019

SUBJECT: Adoption of Resolution to enter Interlocal Agreement with the Michigan Cooperative Liquid Assets Securities System (CLASS)

RECOMMENDATION

It is recommended that the City Commission approve the resolution. The resolution will allow the City Treasurer to utilize Michigan CLASS as a tool in the overall investment strategy.

BACKGROUND

Michigan CLASS is a local government investment pool open to all Michigan municipalities that emphasizes safety, liquidity, convenience, and competitive yield. Michigan CLASS invests only in instruments applicable to Michigan state laws governing investment options for local agencies. Michigan CLASS is governed by a 13 member Board of Trustees elected by the program Participants. Michigan CLASS is rated ‘AAAm’ by S&P Global Ratings Services.

FISCAL IMPACT

Given the typical yield and high liquidity of Michigan CLASS, participation is expected to increase overall investment return by using Michigan CLASS as part of the overall investment strategy.

ALTERNATIVES

The Commission could choose not to approve the resolution. This would prevent the City from utilizing Michigan CLASS as an investment option.

ATTACHMENTS:

Type	Description
Resolution	CLASS Participation Agreement Resolution

CITY OF KALAMAZOO, MICHIGAN

RESOLUTION NO. _______

A RESOLUTION TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MICHIGAN COOPERATIVE LIQUID ASSETS SECURITIES SYSTEM (CLASS)

Minutes of a regular meeting of the City Commission of the City held on the ____day of __________, 2019, at or after or after 7:00 o'clock p.m., local time, at City Hall.

PRESENT, Commissioners:

ABSENT, Commissioners:

The following preamble and resolution was offered by _________________________ and supported by _________________________.

WHEREAS, The City of Kalamazoo as a Public Agency desires to enter into an interlocal agreement as outlined in the attached Participation Agreement hereto as Exhibit A, for the purposes of exercising jointly the power the City of Kalamazoo has to invest its surplus funds; and

WHEREAS, The City is a Public Agency under the Participation Agreement and is authorized by Michigan law to invest its funds in certain investments (the Permitted Investments);

WHEREAS, Act 7 of the Public Acts of the Extra Session of 1967, as amended, (the Urban Cooperation Act of 1967) authorizes the Public Agencies to contract in the form of an interlocal agreement to provide for the manner of investments of surplus funds or proceeds of grants, gifts, or bequests to the parties to the interlocal agreement under the control of a legal or administrative entity created by that interlocal agreement.

NOW THEREFORE, BE IT RESOLVED,

1. The City Commission adopts the Participation Agreement substantially in the form of Exhibit A which is incorporated in the Resolution by reference thereto and agrees to join with other Public Agencies to become a Participant under the terms of the Participation Agreement and to accept additional Public Agencies as new Participants without subsequent action.

2. The City Commission agrees to and concurs in the appointment of those Trustees either being appointed, to be appointed or currently serving as members of the Board of Trustees created under the Participation Agreement and recognizes those Trustees and their successors as the appointees of the Public Agency.

3. The City Commission acknowledges and confirms the representation, warranties and covenants provided in the Participation Agreement to the Investment Advisor and Custodian under the Participation Agreement, upon which they may respectively rely.

4. The City Commission herby authorizes the City Treasurer, to take the following actions with regard to the participation of the City of Kalamazoo in the Participation Agreement:
    a. Deliver a certified copy of this Resolution to the Investment Advisor under the Participation Agreement.
    b. Execute and deliver all notices, directions and instructions required or permitted by the Participation Agreement from the City of Kalamazoo.
    c. Make contributions to the Investment Property as provided in the Participation Agreement and select all or part of the Surplus Funds, as defined in the Participation Agreement, to be contributed to the Investment Property.
    d. Consent to an amendment to the Participation Agreement on behalf of the City of Kalamazoo if such amendment is not materially averse to the interest of the City, is necessary to conform to the Participation Agreement with law, or is a technical change necessary to facilitate the intent of the Participation Agreement.

5. The City understands and agrees that it shall not amend or repeal this Resolution except to the extent necessary to alter the limitations imposed on the Authorized Officer, to change Authorized Officers, or to withdraw from the Participation Agreement.

6. All resolutions and parts of resolutions which conflict with the Resolution shall be, and hereby are, amended or repealed to the extent of such conflict.

The above resolution was offered by ___________________________ and supported by ________________________________

AYES, Commissioners:

NAYS Commissioners:

ABSTAIN Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on ______________________, 2019. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

____

Scott A. Borling, City Clerk

Commission Agenda Report
City of Kalamazoo

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

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

REVIEWED BY: Clyde J. Robinson, City Attorney

PREPARED BY: John W. Kneas, BRA Counsel

DATE: 6/11/2019

SUBJECT: Brownfield Plan Redevelopment and Purchase Agreement for Parcel in Davis Creek Business Park

RECOMMENDATION

It is recommended that the City Commission adopt the Resolution to approve the attached Brownfield Plan Redevelopment and Purchase Agreement (Agreement), regarding the approximate southerly 6-acre portion of Davis Creek Business Park (DCBP) to Davis Creek Land Development Co., LLC, and authorize the City Manager, or his designee, to sign the Agreement and any further documents to complete the sale.

BACKGROUND

The approximate 34-acre site that formerly housed Lakeside Refinery was initially acquired over several years by the city under the delinquent tax reversion program. The property was then transferred to the Brownfield Redevelopment Authority (BRA) to redevelop DCBP as a certified business park. To allow for flexibility in redevelopment options (and to avoid the platting requirements of the Land Division Act) BRA and the City became joint owners of DCBP. The goal for DCBP was a mixed-use project (consisting of approximately 8 separate parcels) that integrated business development with sustainable, environmentally-sensitive site design. Since the official opening of DCBP on October 24, 2007, there was little interest by developers in any portion of DCBP. As a result - and to improve marketability - the development standards established in 2008 were rescinded last year. (At the time staff was discussing a potential project with an aluminum refinishing company that eventually relocated to Battle Creek.)

With the State's new Medical Marihuana Facilities Act and the corresponding city ordinance, interest in DCBP increased. The commitments from the Developer and the relevant provisions of the attached Agreement are summarized as follows:

- Redevelop and improve the approximately 6-acre portion of DCBP that is located south and west of Full Circle Drive by initially constructing a building of approximately 19,550 square feet for purposes of operating a medical marihuana facility to cultivate and process medical marihuana. (Project). Developer has included in its preliminary site plans submitted to the City proposed and conceptual plans for additional phases for future expansion of Seven Point's operations. If business conditions support such efforts, Developer will begin each phase within 18 months of the Completion Date of Phase 1 and any subsequent phase, but not longer than 3 years.

- The initial capital investment for the Project is approximately $1,000,000.00 and will upon completion result in the creation of approximately 15 FTE jobs. Purchase Price for the 6 acres is $120,000 based on an actual survey respect at $20,000/acre.
- BRA is not committing to providing any incentives to Developer; any consideration to reimburse Developer for eligible activities is dependent upon Developer providing, at its cost, a pro-forma in sufficient detail for a financial analysis whether the Project's viability will require a commitment by BRA to capture tax increment revenues to reimburse Developer for its Eligible Costs. (The cost of the methane liner required under the building is a key factor in the analysis.)
- BRA and City can terminate the Agreement in the requisite license and permit is not obtained by the closing date.

COMMUNITY RESOURCES CONSULTED

The BRA is scheduled to adopt a resolution to approve the Agreement on June 13, 2019; other than this action, no other community resources were consulted.

FISCAL IMPACT

DCBP has not generated any tax revenues since 1998, when the City acquired under the tax foreclosure process. As with the sale to Harbor Farms Real Estate of a 4-acre parcel in DCBP, the $120,000 sale proceeds will go to BRA. Additionally, the sale of the 6-acre parcel will put that portion of DCBP back on the tax rolls for the general fund.

ALTERNATIVES

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

ATTACHMENTS:

Type	Description
Resolution	City Commission Resolution
Agreement	Part Exec Purchase Agreement
Resolution	BRA Executed Resolution

CITY OF KALAMAZOO

RESOLUTION NO. ___________________

A RESOLUTION APPROVING BROWNFIELD PLAN REDEVELOPMENT AND PURCHASE AGREEMENT

Minutes of a regular meeting of the City of Kalamazoo held on June 17, 2019, at 7:00 p.m., local time, at the City Hall, 241 West South Street, Kalamazoo, Michigan.

PRESENT, Commissioners:

ABSENT, Commissioners:

The following preamble and resolution were offered by Commissioner _________________ and supported by Commissioner ________________.

RECITALS:

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

B. DCBP has gone undeveloped since it was established in 2007 with little interest shown by developers or other businesses seeking to purchase a parcel of land within DCBP.

C. City staff recently received an interest from Davis Creek Land Development Co., LLC, (Owner) in purchasing an approximate 6-acre parcel south and west of Full Circle Drive (Property). Owner will lease the Property to Seven Point Supply, LLC (Seven Point). Owner and Seven Point have the same principal owners and are collectively referred to under the Brownfield Plan Redevelopment and Purchase Agreement (Agreement) as ‘Developer’.

D. City staff negotiated a Brownfield Plan Redevelopment and Purchase Agreement (Agreement), which the BRA Board of Directors reviewed and approved at its June 13, 2019 meeting.

E. The City Commission finds that the Agreement and the sale of this parcel serves a legitimate public interest by placing exempt property back on the tax rolls.

NOW, THEREFORE, IT IS RESOLVED as follows:

1. The Brownfield Plan Redevelopment and Purchase Agreement (Agreement) with Davis Creek Land Development Co., LLC and Seven Point Supply, LLC regarding redevelopment and the purchase of that approximate 6-acre portion of DCBP, depicted in Exhibit A, for $120,000 - increased or decreased on a pro-rata basis after the actual size of the Property is determined by the survey based on $20,000/acre - is approved.

2. The City Manager, or his designee, is authorized to sign the Agreement and any further documents to complete the sale.

3. The Sale of the Property is contingent on Developer having obtained the necessary prequalification for the State license under Act 281, P.A. 2016 to operate a medical marihuana facility to cultivate and process medical marihuana.

AYES, Commissioners:

NAYS, Commissioners:

ABSTAIN, Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on June 17, 2019. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

____
Scott A. Borling, City Clerk

BROWNFIELD PLAN
REDEVELOPMENT AND PURCHASE AGREEMENT

This Brownfield Plan Redevelopment and Purchase Agreement ("Agreement") is entered into effective as of the date of the last signature below (the "Effective Date") among Davis Creek Land Development Co., LLC ("Owner"), a Michigan limited liability company, whose address is 107 West Michigan Avenue, Suite 500, Kalamazoo, Michigan 49007, Seven Point Supply, LLC ("Seven Point"), a Michigan limited liability company, whose address is 1210 Crown Street, Kalamazoo, Michigan 49006 the City of Kalamazoo ("City"), a Michigan municipal corporation, and the City of Kalamazoo Brownfield Redevelopment Authority ("BRA"), a Michigan public body corporate, whose addresses are 241 West South Street, Kalamazoo, Michigan 49007. For purposes of this Agreement all references to "Developer" shall collectively include Owner and Seven Point; and all references to "Seller" shall collectively include the City and BRA.

RECITALS:

A. BRA and the City have determined that brownfield redevelopment constitutes the performance of an essential public purpose.

B. In 2001 and 2002 BRA obtained title, under the delinquent tax foreclosure process and under quit claim deeds from City and the State of Michigan recorded, respectively, at Document No. 2001-014902 and 2002-033935, parcels of real property in the City located at 2805 East Cork Street and 3119 East Cork Street. The parcels were subsequently combined into one 32+ acre parcel with an address of 2805 East Cork Street and Parcel No. 06-25-396-002 (the "Total Property Parcel"). BRA added the City as a joint tenant for the Total Property Parcel by a quit claim deed recorded at Document No. 2008-028198. Further, Seller established the Total Property Parcel as a certified business park known as Davis Creek Business Park ("DCBP").

C. Access to DCBP is through Full Circle Drive, accepted and dedicated as a public street by the City under a resolution and quit claim deed, respectively, recorded at Document No. 2009-038722 and Document No. 2009-038723.

D. The City established the BRA and has adopted a Revised Brownfield Plan; the current version is the Fourth Amendment to Revised Brownfield Plan ("Revised Plan"), pursuant to the provisions of PA, 1996, Act 381, being MCL 125.2651, et seq., ("Act 381"). The BRA and the City have designated certain properties, with conditions of environmental contamination, blight or functional obsolescence, as appropriate sites for redevelopment and inclusion into the Revised Plan. Accordingly, BRA has determined that the Total Property Parcel qualifies as "eligible property" under the terms of Act 381 and will recommend to the City Commission to add the Total Property Parcel to the Revised Plan.

E. Owner intends to redevelop and improve the southerly approximately six-acre portion of DCBP by initially constructing one building approximately 19550 square feet ("Phase 1"), and by making certain site improvements for purposes of operating a medical marihuana facility to cultivate and process medical marihuana (the "Project"). The capital investment for Phase 1 of the Project is approximately One Million and 00/100 Dollars ($1,000.000.00).

F. Owner intends to lease the Property to Seven Point and Seven Point will own and operate the medical marihuana facility on the Property. Seven Point will create approximately 15 full time equivalent ("FTE") jobs for Phase 1 of the Project. The principal owners of Owner and Seven Point are the same individual(s) or entities.

G. To complete Phase 1 of the Project, Owner will incur, under Act 381, Eligible Costs for Eligible Activities. Those Eligible Activities may include demolition, site preparation, infrastructure improvements or environmental activities to satisfy due care obligations, all of which may require the services of various contractors, engineers, environmental consultants, attorneys and other professionals. However, as of the Effective Date, Owner has represented to Seller that it does not intend to request reimbursement for its Eligible Costs from BRA under the Revised Plan pursuant to Act 381. Therefore, nothing in this Agreement commits or requires BRA to capture tax increment revenues ("TIR") to reimburse Owner for its Eligible Costs pursuant to the Revised Plan. If within the Environmental Due Diligence Period (as defined in Paragraph 12) Developer requests that BRA capture TIR in support of this Project, BRA's approval of that request is subject to Paragraph 13 below.

H. Seller believes that the sale of the Property (as defined below) and the completion of this Project will enhance the redevelopment of the remaining portion of DCBP.

I. Developer and Seller desire to enter into this Agreement for the mutual benefit of both parties, subject to the following terms and conditions.

NOW, THEREFORE, the parties agree as follows:

1. *RECITALS*: The above recitals are acknowledged as true and correct, and are incorporated by reference into this paragraph.

2. *DESCRIPTION OF THE PROPERTY*: The southerly approximate six-acre portion of DCBP that is the subject of this Agreement is located in the City and County of Kalamazoo, State of Michigan, and is more fully described and depicted on Exhibit A attached and incorporated as part of this Agreement ("Property"). For the purposes of this Agreement, the Property shall include, if applicable, all improvements, fixtures, easements, hereditaments, and appurtenances associated with the real estate described on Exhibit A. If between the Effective Date and Closing an updated survey is completed to reflect any needed adjustments to the western boundary line of the Property, the legal description and depiction of the Property from the updated survey will replace Exhibit A.

3. *THE REVISED PLAN*: The Revised Plan, as it relates only to this Property will be attached as Exhibit B and incorporated as part of this Agreement upon receipt or

notification from the State of Michigan that Developer has been approved for a license to operate a medical marihuana facility on the Property. To the extent provisions of the Revised Plan or this Agreement conflict with Act 381, Act 381 controls.

4. *CONSIDERATION AND OPTION*: Owner will purchase the Property from Seller for One Hundred Twenty Thousand and 00/100 Dollars ($120,000) ("Purchase Price"), and other good and valuable consideration as set forth in this Agreement. However, the Purchase Price shall be increased or decreased on a pro-rata basis after the actual size of the Property is determined by the updated survey based on the agreed formula of $20,000/acre. Upon fulfillment of the terms and conditions of this Agreement, Seller will convey the Property by covenant deed to Owner simultaneously upon receipt of the Purchase Price.

5. *TITLE INSURANCE*: Within fourteen (14) days following the Effective Date, at Seller's expense, Owner will obtain a title commitment for the Property issued by a title insurance company ("Title Company") (with knowledge that the Property will be used for a medical marihuana facility) ("Title Commitment") for an owner's title insurance policy insuring Owner in the amount of the Purchase Price, without the standard printed exceptions and in the latest form approved by the American Land Title Association. Seller shall provide any surveys, affidavits and certificates required by Title Company for Title Company to issue the title policy without exceptions or with additional endorsements (the "Title Policy"). Owner is responsible for paying the added premium charged for a policy without exceptions and with any additional endorsements.

6. *SURVEY*: Owner has had the Property surveyed by a registered land surveyor; and prior to Closing Owner will have the survey updated to confirm the western boundary line of the Property so that Seller retains ownership of the stormwater management system (including the area for an access road) that serves DCBP and is adjacent to the Property. Seller will provide Owner with any topographical and boundary surveys of the Property or DCBP that it has in its possession. (All surveys, including any subsequently updated survey, regarding the Property are individually and collectively referred to as a "Survey"). The legal description of the Property set forth in the Title Commitment shall conform exactly to the legal descriptions in the Survey and the Survey shall contain such detail from the ALTA/ACSM Schedule A Table as Owner deems required and shall show all matters set forth on Schedule B-2 of the Title Commitment.

7. *DEFECTS*: Owner shall notify Seller within twenty (20) days after Owner's receipt of the last dated version of the Title Commitment, legible copies of all documents listed in the Title Commitment as exceptions, and any Survey (the "Review Period"), if there are any unacceptable issues, as determined in Owner's sole and absolute discretion ("Defects") regarding the Property for which City is responsible. The items contained in the Title Commitment or the Survey to which Owner does not object during the Review Period are considered permitted exceptions (the "Permitted Exceptions"). If Owner notifies Seller of Defects prior to the expiration of the Review Period, Seller has ten (10) days after receiving that notice (the "Cure Period"), within which Seller may (but is not required to) cure or remove such objection or obtain title insurance against the

objectionable condition in a manner acceptable to Owner, in Owner's sole and exclusive judgment. Any lien, encumbrance or defect arising from any mortgage, tax lien or assessment if not sooner eliminated by Seller, shall be paid from the closing proceeds.

If Seller fails either to cure or remove a Defect or obtain such title insurance to the reasonable satisfaction of the Title Company and Owner prior to the expiration of the Cure Period, Owner may either terminate this Agreement without liability or waive that objection and accept the condition of title as it then is. If, after the expiration of the Cure Period, Owner fails to notify Seller that it has elected to terminate this Agreement, then Owner shall have waived its objections regarding the Defects and shall have accepted the condition of the title as set forth in the Title Commitment and the Survey as Permitted Exceptions (subject to the payment from the closing proceeds necessary to discharge any mortgage, tax lien, or the lien of any assessment) and proceed to Closing.

On the Closing Date, Seller will cause the Title Company to issue to Owner, at Seller's expense, the Title Policy. The Title Policy shall insure title to the Property in the amount described above, without standard exceptions, but subject to the Permitted Exceptions. Seller shall cooperate with the Title Company and deliver any owner's affidavits, documents or instruments to it to facilitate the removal of the standard exceptions from the Title Policy.

Seller agrees not to take any action between the time of execution of this Agreement and the closing that will cause any lien or encumbrance to the Property.

8. *INSPECTION*: Owner and its agents, consultants, and designees ("Owner's Agents") may from time to time inspect the Property prior to the Closing Date, and may enter the Property to perform the inspections referenced in this Agreement. Upon execution of this Agreement by both parties, Seller shall provide to Owner, or make available for review by Owner or Owner's Agents, copies of the following documents to the extent that they are in Seller's possession or control ("Seller Documents"): (i) all wetlands, and fill permits, zoning variances and approvals, and environmental documents with respect to the Property; (ii) any prior title commitments or surveys of the Property; (iii) any environmental reports or assessments in the possession of the Seller; (iv) any notices with respect to the Property received from a governmental agency within the five-year period preceding the date of this Agreement; and (v) all leases, licenses, maintenance and other contracts or documents affecting the Property, specifically including those documents regarding the development of DCBP following Seller's ownership of the Total Property Parcel.

9. *SELLER'S REPRESENTATIONS AND WARRANTIES*: Seller, to the best of its knowledge, represents and warrants to Owner, as of the date of this Agreement and until the closing date, as follows:

A. There are no pending or threatened condemnation proceedings against any part of the Property;

B. There are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or threatened regarding the Property;

C. Subject to Paragraph 24, the Agreement for Conservation Easement and the Grant of Easement between BRA and Michigan Department of Environmental Quality recorded, respectively, at Document No. 2006-041675 - as subsequently corrected in Document No. 2006-045115- and at Document 2008-002550, the Property is free and clear of any known violations of applicable federal, state and local laws, ordinances, orders, codes, rules, regulations, building and use restrictions, and other legal requirements (collectively, "Applicable Laws");

D. The persons signing this Agreement on behalf of Seller have full power and authority to enter into this Agreement, and to perform, or through performance by City employees who assist BRA, all of Seller's obligations under this Agreement;

E. Except as noted in the above Subparagraph C, there are no contracts, written or oral, which affect the Property or the Total Property Parcel in any manner other than this Agreement; and

F. There is no pending or proposed special assessment affecting or which may affect any part of the Property.

Without waiving any rights under governmental immunity, Seller shall hold Owner harmless from and against any loss, including, without limitation, reasonable attorney fees, incurred by reason of Seller's breach of any of the above representations and warranties.

10. *CONTINGENCIES*: The obligation of Owner to close on the purchase of the Property is contingent upon Owner's reasonable satisfaction, in Owner's sole opinion, of the following:

A. The results of its investigation that the Property complies with Applicable Laws.

B. The results of all inspections of the Property that Owner has performed (e.g., soil tests, etc.), including environmental due diligence investigations.

C. All representations and warranties of Seller set forth in this Agreement remain true as of the closing date.

D. Seller has timely performed and complied with all its covenants, obligations, and responsibilities under this Agreement.

E. Its review of Seller Documents and the condition, permitted use and development prospects for the Property. Owner shall perform such review, at its expense, within thirty (30) days after the date that Seller delivers the last of the Seller Documents to Owner.

F. The City has approved the addition of the Property into the Revised Plan, if BRA has approved the capture of TIR to reimburse Owner for its Eligible Costs as detailed in Paragraph 13.

G. Developer has obtained the appropriate license from the State of Michigan and permit from the City to operate a medical marihuana facility. If Developer fails to obtain prequalification for the State license, including any extension granted by the State or City for the license and permit, by the date of closing, Seller, in its sole discretion, may also terminate this Agreement.

If Owner reasonably determines, in Owner's sole opinion, that one or more of the contingencies has not been met, and Owner is not willing to waive such contingency, then Owner's sole remedy is to terminate this Agreement by prompt written notice to Seller. Upon such termination neither Seller nor Developer shall have any further liability to the other under this Agreement.

11. *DEVELOPER COMMITMENTS*: In addition to the payment of the Purchase Price for the Property, Developer agrees that it will complete the following (collectively and individually "Undertakings"):

A. Redevelop Phase 1 on the Property by constructing one building approximately 19,550 square feet and by making certain site improvements to the Property for purposes of operating a medical marihuana facility to cultivate and process medical marihuana. More specifically, Owner shall complete the Project substantially complying with the proposal it presented to the Seller. Subject to matters beyond the reasonable control of Owner (e.g., matters of force majeure, acts of God, failure to obtain governmental approvals, etc.), Owner shall commence construction of the Project within 6 months from the date on which Developer receives the appropriate licenses from the State of Michigan and permits from the City to operate a medical marihuana facility (the "Project Start Date"), and shall Substantially Complete the Project ("Substantially Complete" shall be defined as the date when Developer receives a temporary or final occupancy permit from the City), within 24 months of the Project Start Date ("Completion Date"). The total capital investment for Phase 1 shall be approximately One Million and 00/100 Dollars ($1,000.000.00) with the creation of an estimated 15 FTE jobs at the Property.

Developer has included in its preliminary site plans submitted to the City proposed and conceptual plans for additional phases for future expansion of Seven Point's operations. If business conditions support such efforts, Developer will begin each phase within 18 months of the Completion Date of Phase 1 and any subsequent phase. However, if Developer has not begun any phase within 3 years of Phase 1 or any subsequent Phase, then Developer is considered in default under Paragraph 19 and BRA may enforce that default under Paragraph

20. Before construction can begin, Developer understands that site plans would be required to be submitted and approved by the City, consistent with the manner of proceeding with the initial phase of construction. All subsequent site plans for any additional phases for the Property will be limited to maintain a maximum impervious coverage of 60%, as the stormwater management system for DCBP is based on this impervious surface maximum (the "Impervious Coverage Limit"). The Impervious Coverage Limit shall survive closing and shall be included in the covenant deed as a restrictive covenant.

B. Make a reasonable effort to work with the City and community employment agencies to hire city residents for new employment opportunities created by the Project, and to encourage the local contracting of construction and site related work; particularly, to review with organizations for employment opportunities through entry employment programs. Regardless of Developer's ability to hire city residents, Developer, and any contractors hired to perform work on the Project, shall follow the City's "Ex-Offender Purchasing" policy regarding hiring new employees who will work on the Project. A copy of this policy is attached as Exhibit D, and Developer will provide a copy of it to any of the contractors prior to performing any work on the Project.

C. Provide any updated conceptual renderings, architectural or engineering drawings or plans for the Project (collectively "Project Plans") to the Seller within a reasonable time after any Project Plan is completed. Any substantial deviation in the Project or Project Plans requires the consent of the Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Final Project Plans or 'As Built' plans shall be submitted to the Seller within 10 days of their completion. Redevelop and improve the Property and complete the Project in compliance with all applicable federal, state and local laws, rules and regulations, specifically to include, without limitation: (i) all applicable requirements under both the Medical Marihuana Facilities Act (Act 281, P.A. 2016, being MCL 333.27101 et. seq., as amended) ("Act 281") and Ordinance No. 1957 of the City's Code of Ordinances ("Ord. 1957"); (ii) building and zoning codes; (iii) site plan review; and (iv) this Agreement and any other agreement that relates to the Property or the Project.

D. Reasonably assist and cooperate with the BRA in providing information that the BRA may require in submitting necessary reports to other governmental agencies, specifically to include all information BRA needs to file annual reports to the State as required under Act 381 and the required information the State needs to approve the 381 Work Plan if Owner has requested BRA to capture school taxes.

E. Assume responsibility for the costs of all utility connections from the property line to the proposed building.

F. Place on the site during construction a development sign provided by City and the BRA to promote the Project and the City and BRA's participation in it. Upon completion of the Project return the sign to City and/or the BRA.

H. Permit BRA to cite to or to use any renderings or photographs of the Project as an example of private/public partnership and brownfield site redevelopment, with Developer's reasonable advance approval as to such photographs and the language used for such citations.

12. *ENVIRONMENTAL ASSESSMENT*: Within thirty (30) days after the Effective Date ("Environmental Due Diligence Period"), Owner may, at its option and own expense, conduct its own environmental due diligence that may result in a Baseline Environmental Assessment ("BEA") within the meaning of Part 201 of the Natural Resources and Environmental Protection Act, Act 451 of 1994 as amended (Part 201). Owner's satisfaction with the results of the environmental due diligence investigation shall be a contingency for closing. Within a reasonable period after the submission of the BEA, or in conjunction with the preparation of the BEA, Owner shall also, at its own expense, prepare a due care compliance analysis within the meaning of Part 201, if one is required pursuant to Part 201.

Owner shall have ten (10) days after receipt of the BEA and the due care compliance analysis, or to the expiration of the Environmental Due Diligence Period, whichever is later, to give written notice to Seller whether or not it is satisfied with these environmental reports. If Owner fails to provide such timely notice to Seller, then Owner is considered to have waived this contingency for closing.

If the Owner notifies Seller that the environmental due diligence investigation reveals unsatisfactory environmental conditions that will unreasonably impact the financial viability for the Project, and Owner and Seller are unable to agree on how to address those environmental conditions to the satisfaction of Owner, in Owner's sole opinion, within fifteen (15) days after Owner's notification, Owner may terminate this Agreement, unless the parties both sign an agreement to extend the time period.

13. *PROJECT PRO FORMA AND FINANCING*: Within the Environmental Due Diligence period under Paragraph 12 and if Owner seeks financial assistance from BRA, Owner shall provide BRA with a Pro Forma for the Project in sufficient detail to allow a third party selected solely by BRA to analyze whether the Project's viability will require a commitment by BRA to capture TIR to reimburse Owner for its Eligible Costs as set forth in Paragraph 14 ("Financial Analysis"). Owner shall pay the cost for the Financial Analysis. While the estimate for the Financial Analysis is Five Thousand and 00/100 Dollars ($5,000.00), the final cost will be based on third party's determination of the cost in agreement with BRA.

Regardless of whether Owner has requested financial assistance from BRA, Owner shall, prior to the Closing Date, provide information confirming its ability to fund the Project by providing Seller with evidence of that ability. Such evidence may include a lender's financing commitment or personal financial statement. If Owner does not provide information confirming its ability to fund the Project which is reasonably satisfactory to BRA, the BRA may, in its reasonable discretion, terminate this Agreement.

14. *BRA COMMITMENTS*: Subject to BRA's satisfaction, in its sole and absolute discretion, of the Financial Analysis, BRA agrees to provide, complete or perform the following inducements or tasks to assist Owner towards completion of the Project, including the application of TIR as outlined in Paragraph 15 (collectively and individually "Incentives"):

A. Extend to Owner the benefits outlined in the Revised Plan, subject to the provisions of Act 381. Those benefits include reimbursement for "Eligible Activities", as defined below, from captured TIR detailed in Paragraph 15. These activities are any eligible activity allowed under Act 381, including, but not necessarily limited to, demolition, site preparation (soil removal, grading, filling, etc.), infrastructure improvements, environmental assessment, due care obligations, or environmental response activities; and the services of various contractors, engineers, environmental consultants, attorneys and other professionals retained regarding such activities ("Eligible Activities"). Before undertaking Eligible Activities, Owner should discuss those activities with appropriate City staff prior to incurring such costs.

B. Seller will cooperate and undertake reasonable efforts to assist Developer in obtaining approvals from appropriate state agencies for additional financial assistance for the Project.

C. Provide the Developer with appropriate service agency/employment agency contacts for the identification of city residents as potential employees to interview for employment.

D. No official, board member, officer or employee of BRA or of the City is personally liable to Developer or its successor in interest upon a breach or default by BRA for any amount payable to Developer or its successor or any obligation under this Agreement.

15. *TERM OF AGREEMENT*: Under the Revised Plan, BRA shall capture and reimburse Owner that amount of TIR generated from local real and personal property taxes, including school taxes approved by the State of Michigan, allowed by law on the Property, beginning on December 31 in the year Owner has completed the Project under the following conditions:

A. Based on the review of the Financial Analysis, BRA shall determine the amount of and number of years that it will capture TIR for Owner's Eligible Costs. ("BRA TIR Reimbursement")

B. Within twenty (20) days after it receives the Financial Analysis BRA will provide a written itemization to Owner of the BRA proposed TIR Reimbursement and what Eligible Activities are covered. Owner shall have ten (10) days after receipt of the BRA proposed TIR Reimbursement to notify BRA whether it accepts or rejects the BRA proposed TIR Reimbursement. If Owner fails to notify BRA within the ten (10) day period it is considered to have accepted the BRA proposed TIR Reimbursement. However, Developer shall have the option to terminate this Agreement if it rejects the BRA proposed TIR Reimbursement. The parties may extend the ten (10) day review period by written agreement signed by both parties.

In addition to the above, Developer understands that the BRA is entitled by Act 381 to capture and retain TIR generated by this Project for the following purposes: (i) reimburse itself for the eligible activities it incurred in acquiring and redeveloping DCBP, including the cost of Full Circle Drive ("BRA Eligible Activities"); (ii) payment for certain administrative operating expenses BRA incurred ("BRA Admin Costs"); and (iii) to fund the Local Site Remediation Revolving Fund relating to this Project for an additional term not to exceed five (5) years following the above reimbursement to Owner – subject to any adjustments under Paragraph 18. BRA Eligible Activities and BRA Admin Costs are referred to as "BRA TIF".

The maximum amount of BRA TIF captured from all the TIR generated by the Project during the above term will not exceed the percentage of the final acreage of Property - as determined by the Survey - to the total acreage of DCBP, minus the combined acreage of the parcel(s) sold to Harbor Farms Real Estate, LLC and the area of the Wetlands under the Conservation Easement. BRA will provide Owner an itemization of BRA Eligible Activities and an estimation of BRA Admin Costs.

16. *REIMBURSEMENT SOURCE*: During the term of this Agreement, and except as set forth in Paragraph 17A below, the BRA shall reimburse the Owner for its Eligible Costs, as limited under Paragraph 15 of this Agreement and the above percentage, from all applicable TIR collected from the real and personal property taxes on the Property.

17. *REIMBURSEMENT PROCESS*:

A. Before March 31 of the year after Owner has completed the Project (and in no event more than 2 years following the Completion Date ("Late Submittal")) the Owner will submit to the BRA the Eligible Costs Reimbursement Form, attached as Exhibit E (the "Reimbursement Form"), that identifies the costs of each of the Eligible Activities as described in Paragraph 14A. When submitting the Reimbursement Form, the Owner will also provide sufficient documentation of the Eligible Costs incurred including the dates, complete description of the work, proof of payment (accompanied by signed lien waivers from the applicable contractors or subcontractors) and detailed invoices for the costs involved for each Eligible Activity. The Reimbursement Form and the above additional documentation comprise the "Completed Request".

Owner understands that the Late Submittal of the Reimbursement Form shall not extend the term of this Agreement under Paragraph 15. Owner assumes all risks that a Late Submittal will result in TIR capture for the Project by BRA of less than the amount as determined under Paragraph 15.

B. The BRA shall review the Completed Request within sixty (60) days after receiving it. If the BRA determines that the documentation submitted by the Owner is not a Completed Request, then Owner shall cooperate in the BRA's review by providing additional documentation of the Eligible Costs as deemed reasonable and necessary by the BRA to complete its review.

C. Before July 31 of the year after Owner completed the Project (and as property taxes are received each subsequent year) after both the summer and winter taxes are captured on the Property, the BRA shall pay approved Eligible Costs to the Owner from such available TIR following the Revised Plan and this Paragraph 17. If there are insufficient TIR available in any given year to reimburse all the Owner's Eligible Costs, as described in Paragraph 14A, then the BRA shall reimburse the Owner only from available TIR. The BRA shall make additional payments, on an annual basis as property taxes are received, toward the Owner's remaining unpaid Eligible Costs during the term of this Agreement. Reimbursement of Eligible Costs is subject to Developer paying the Developer's taxes levied against the Property and the personal property used in the business or operations conducted from the Property.

D. The BRA will reimburse the Owner for Eligible Costs as follows:

Checks shall be payable to:	Seven Point Supply, LLC
Delivered to the following address:	c/o Kyle Barker
(By certified mail or personally)	1210 Crown Street
	Kalamazoo, Michigan 49006

18. *ADJUSTMENTS*: The parties acknowledge that adjustments regarding the amount of TIR paid to Owner may occur under any of the following circumstances:

A. If either a state agency of competent jurisdiction conducting an audit of payments made to the Owner under this Agreement or a court of competent jurisdiction determines that any portion of the payments made to the Owner under this Agreement is unlawful under Act 381, the Owner shall pay back to the BRA that portion of the payments made to the Owner within thirty (30) days of such determination. However, the Owner shall have the right, before any such repayment is made, to appeal on its or the BRA's behalf any such determination made by a state agency or court, and the BRA agrees to cooperate with Owner in any such appeal. If the Owner is unsuccessful in that appeal, the Owner shall repay the portion of payments found to be unlawful to the BRA within thirty (30) days of the date when the final determination is made on the appeal.

B. If during the term of this Agreement Developer successfully petitions the Michigan Tax Tribunal (Tribunal) to lower the assessments levied by the City of

Kalamazoo against the Property or the personal property used in the business operations for tax purposes, the provisions under Paragraphs 14 and 15 may require a redetermination regarding the BRA TIR Reimbursement because of such lower assessments. If such adjusted amount is less than the actual amount of TIR that BRA has already paid to the Owner, Owner shall reimburse BRA the difference between the total amount of adjusted TIR captured under BRA TIR Reimbursement and the amount paid to Owner. Otherwise, any refund due Owner because of the lower assessments is limited only to the amount such refund exceeds the amount of TIR paid to Owner for those years covered by the Tribunal's order.

19. *EVENTS OF DEFAULT*: During the term of this Agreement, any of the occurrences listed below is considered a default ("Event of Default") and shall entitle BRA, at its option and with written notice to Developer, to exercise any of its rights under Paragraph 20:

A. Failure to abide by the time periods or due dates under which Owner commits to perform the Undertakings; including any additional time the BRA elects to provide Owner to cure such default in a written notice.

B. Failure to substantially meet the capital investment, square footage or job creation criteria for the Project as more fully detailed under Paragraph 11A; failure to Substantially Complete the Project in accordance with Project Plans, or to satisfy the requirements set forth in the approved site plan; or failure to substantially fulfill the Developer Commitments under Paragraph 11, or otherwise comply with the terms of this Agreement.

C. Failure by Developer to pay when due all taxes levied against the Property or any personal property owned by Developer in connection with the Project or the Property.

D. Actions by Developer, another entity or governmental unit that negatively impact the financial integrity or viability of the Project, including without limitation:

(i) a judicial foreclosure action or initiation of foreclosure by advertisement to enforce mortgage, lien or other encumbrance against Developer; or

(ii) appointment by a court of a receiver or trustee for Developer; or

(iii) a decree by a court adjudicating Developer bankrupt or insolvent, or for the sequestration of any of its property; or

(iv) the filing of a petition in bankruptcy by or against Developer under the U.S. Bankruptcy Code or any similar statute which is in effect; or

(v) an assignment by Developer for the benefit of creditors or a written admission by Developer of the inability to pay debts generally as they become due.

E. Failure to maintain the maximum 60% impervious coverage on the Property. Developer is responsible at its costs to remove any impervious surface(s) above the 60% maximum coverage.

20. *DEFAULT REMEDIES*: If Developer fails to cure any Event of Default within thirty (30) days (or such additional time as BRA permits) of written notice to Developer, the BRA shall have the option to exercise one or any combination of remedies under this Agreement or otherwise available at law or in equity, including without limitation:

A. To withhold, suspend or rescind reimbursement to Owner for Eligible Costs from TIR under Paragraph 15 until Developer has cured that Event of Default to the satisfaction of BRA. Any action by the BRA shall not under any circumstances extend the time period under the BRA TIR Reimbursement unless specifically approved by BRA.

B. To obtain the immediate rebate of all payments made to Owner for reimbursement of Owner's Eligible Costs that BRA paid through date of the Event of Default.

C. To reimburse BRA or the City for all reasonable costs and expenses, including reasonable attorney fees, incurred by either of them to enforce their rights under this Agreement; and to specifically include the removal of any impervious surface(s) above the 60% maximum.

D. If Developer fails to commence construction of a future expansion as noted under Paragraph 11, it shall pay to Seller, as liquidated damages, an amount based on the remaining undeveloped acres of the Property at $20,000/acre.

E. To secure any amount owed by Developer to BRA or the City under this Paragraph, BRA has the right to place a lien against the Property in the same manner as delinquent taxes, including accruing interest, penalties and administrative expenses until the lien is fully satisfied.

21. *CLOSING*: The closing of this transaction (the "Closing") shall take place within sixty (60) days of the Effective Date (the "Closing Date"). However, either party shall have the right to extend the Closing Date for an additional thirty (30) days to complete necessary due diligence, to cure any Defect, or to satisfy any contingency by written notice to the other party.

A. At the Closing, Seller shall execute and/or deliver to Owner and shall be otherwise responsible for the following, the delivery of all of which shall be a condition precedent to Owner's obligation to close, any of which conditions Owner may waive in its discretion:

(i) A covenant deed conveying title to the Property in the form satisfactory to Owner's counsel (the "Deed");

(ii) An affidavit pursuant to Section 1445 of the Internal Revenue Code that Seller is not a foreign person or other foreign entity, and setting forth Seller's tax identification number, in form satisfactory to Owner's counsel;

(iii) All conveyances and discharges necessary to confirm unencumbered title to the Property in Owner, except for any Permitted Exceptions;

(iv) Seller shall pay all state, county and other transfer taxes payable with respect to the Deed to be delivered pursuant to this Agreement and shall pay the Title Policy premium as noted in Paragraph 5 and one-half (1/2) of the closing costs charged by the Title Company; and

(v) The closing statement and such other documents or activities as shall be reasonably requested by Owner or the Title Company or required by law to consummate the Closing and permit the issuance of a policy of title insurance insuring Owner's interest in the Property as provided above.

B. At the Closing, Owner shall execute and/or deliver to Seller and shall be otherwise responsible for the following:

(i) The Purchase Price shall be paid in full by wire transfer of cashier's check, with appropriate adjustments for any prorations required hereunder;

(ii) Owner shall pay the cost of any special title insurance endorsements requested by Owner, and one-half (1/2) of the customary closing costs; and

(iii) The closing statement and such other documents or activities as shall be reasonably requested by Seller or the Title Company or required by law to consummate the Closing.

(iv) Developer has obtained all necessary licenses and/or permits under Act 281 and Ord. 1957 to operate a medical marihuana facility to cultivate and process medical marihuana

22. *POSSESSION*: Owner is entitled to sole and exclusive possession upon payment of the Purchase Price and receipt of the covenant deed to the Property.

23. *TAXES*: The Property is currently exempt from property tax; this status will change on December 31 following the Closing Date. Developer shall pay all real and personal property taxes that are due after the Closing Date. Seller shall pay any assessments levied against the Property prior to the Closing Date, and Owner will pay when due any assessment, or annual installment, that is levied or due against the

Property after the Closing Date.

24. *ENVIRONMENTAL CONCERNS*: Owner, having the opportunity to inspect and test the Property, accepts the Property in "as is/where is" condition. Seller makes no representations regarding environmental hazards or liabilities on or relating to the Property. Owner acknowledges that Seller may not be under an obligation to perform any cleanup or other remedial action.

25. *TIME IS OF THE ESSENCE*: The parties agree that in all matters relating to this Agreement, time is of the essence.

26. *NOTICES*: Any notice or other communication required under this Agreement shall be in writing, signed by an authorized representative, and delivered either (i) in person or (ii) by certified or registered mail, with return receipt requested, or (iii) by a recognized overnight or daytime courier or (iv) first class mail, with proper postage or charges fully prepaid, and properly addressed to the following:

Developer:
Seven Point Supply, LLC
c/o Kyle Barker
1210 Crown Street
Kalamazoo, MI. 49006

w/ copies to:
Darren Malek, Esq.
Veritas Law Group
Suite 500
107 West Michigan Avenue
Kalamazoo, MI 49007

Seller:
City of Kalamazoo
c/o James K. Ritsema, City Manager
241 West South St.
Kalamazoo, MI 49007

w/copies to:
The Office of the City Attorney
241 West South St.
Kalamazoo, MI 49007

Notice is considered to have been given on the date of delivery, if delivered personally; on the date of mailing, if sent with all postage prepaid by first-class mail, certified or registered mail with return receipt requested, or over-night mail; or on the date of delivery to a recognized overnight or daytime courier. Each party shall notify the other of any changes in the person or the address for the receipt of notices or other communication.

27. *CONDEMNATION, FIRE, OR OTHER CASUALTY*: Seller shall promptly notify Owner of any impending or actual condemnation proceedings against the whole or any part of the Property of which Seller has actual notice or any fire or other casualty to the Property. If any condemnation proceedings are initiated or threatened against the Property, or if the Property is damaged because of fire or other casualty prior to the closing (to the extent Owner is unable to complete the Project as contemplated under this Agreement), Developer shall have the right:

A. To terminate this Agreement by a written notice to Seller within ten (10) days after receipt of notice of such proceedings or damage, in which case neither

Seller nor Developer shall have any further liability to the other under this Agreement; or

B. To proceed to closing as provided in this Agreement, agreeing to take the Property in its then-current condition, in which case Owner is entitled to receive all the condemnation or insurance proceeds payable as a result of such condemnation or such damage. BRA shall assign its rights to such proceeds to Owner at closing.

28. *STORM WATER MANAGEMENT SYSTEM*:

A. Developer understands that the stormwater management system ("System") was designed to handle the stormwater runoff as if the buildable areas of DCBP, including Full Circle Drive, were fully developed. Among the Seller Documents that Developer will or has received are the original conceptual layout of the developable parcels, the System design and maintenance related documents prepared by Fishbeck, Thompson, Carr and Huber and O'Boyle, Cowell, Blalock and Associates, copies of the Conservation Easement and Grant of Easement.

B. Because of the responsibilities Seller has under those easements, it will continue to own and maintain the System. To maintain the System, Seller will construct at its sole cost an access road as depicted in the site plan approved by the City. To assist in the maintenance of the System the City will assess Owner its pro-rata share of the future costs involved maintaining the System. The formula is determined by the acreage of the Property as a percentage of the then total developed acreage of DCBP, including Full Circle Drive and parcels owned by Harbor Farms Real Estate, LLC or others, from which stormwater is discharged into System. Owner will allow Seller access to a portion of the Property as necessary to conduct the maintenance operations. Seller and Developer will sign a separate Maintenance Agreement and Access Easement by the Closing Date.

29. *GOVERNING LAW*: This Agreement is governed by Michigan law.

30. *BINDING EFFECT/THIRD PARTIES*: This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement.

31. *WAIVER*: No failure of either party to complain of any act or omission on the part of the other party, regardless how long such failure continued, is considered as a waiver by that party to assert any of its rights under this Agreement. And no waiver by either party, expressed or implied, of any breach of any provision of this Agreement is considered a waiver or a consent to any subsequent breach of this same or other provision.

32. *AUTHORIZATION*: Each party represents and warrants to the other that this Agreement and its execution by the individual on its behalf are authorized by the board of directors or other governing body of that party.

33. *ENTIRE AGREEMENT*: This Agreement and the exhibits to this Agreement contain all of the representations and statements by Seller and Developer to one another and express the entire understanding between them regarding this transaction. All prior and contemporaneous communications concerning this transaction are merged in and replaced by this Agreement.

34. *MISCELLANEOUS*:

A. The provisions under Paragraphs 16 through 21 related to the BRA TIF Reimbursement will only apply if the BRA TIF Reimbursement is approved by BRA and becomes a part of this Agreement.

B. If within 5 years of the Closing Date, Developer elects to sell any portion of the Property that remains undeveloped ("Undeveloped Area") or receives a good faith bona fide offer of purchase for the Undeveloped Area, BRA shall have the option to purchase the Undeveloped Area at the appraised value if Developer elects to sell or to match the purchase price of the bona fide offer. Developer and BRA shall in good faith agree upon an appraiser if they are unable to mutually agree on the value of the Undeveloped Area. To match a bona fide offer, Developer shall provide the written offer to BRA within 10 days of receiving it. BRA shall have 30 days after it receives the bona fide offer to notify Developer of its decision on whether or not it will purchase the Undeveloped Area. This right-of-first refusal shall be included in the covenant deed.

C. The representations, warranties, and provisions that require performance subsequent to closing set forth in this Agreement shall survive the closing.

D. This Agreement may be signed in counterparts, which together shall comprise a single agreement. However, the Agreement is not effective until both parties have signed it in compliance with Paragraph 32.

E. Developer understands that any, including electronically transmitted, document or communication submitted by Developer to Seller may meet the definition of a public record and therefore subject to release to the public under the Freedom of Information Act, Act ("FOIA") (MCL 15.231 et. seq.). Consequently, unless specifically allowed under FOIA, Developer will not raise a claim of trade secrets or other privilege or exception under FOIA as it relates to this Agreement or such documents or communications.

F. If Developer, or any affiliate or subsidiary, shall cease to use the Property for the purposes contemplated by the Project, without acceptable alternative uses reasonably approved by the Seller, Developer agrees to continue to maintain the Property in an attractive manner. Furthermore, Developer agrees to comply with applicable law with respect to environmental releases for which it is responsible.

G. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions. Words used throughout this Agreement shall have their common meaning, except any word or term that is specifically defined in Act 381 shall follow that definition or meaning.

Dated: 6/13, 2019

CITY OF KALAMAZOO BROWNFIELD REDEVELOPMENT AUTHORITY

By: PMOwens
Patricia M. Owens
Its: Chair

Dated: ______________, 2019

CITY OF KALAMAZOO

By: ______________________________
James K. Ritsema
Its: City Manager

Dated: June 11th, 2019

DAVIS CREEK LAND DEVELOPMENT CO., LLC

By: ______________________________
Kyle Barker
Its: Managing Member

Dated: June 11th, 2019

SEVEN POINT SUPPLY, LLC

By: ______________________________
Kyle Barker
Its: Managing Member

CITY OF KALAMAZOO
BROWNFIELD REDEVELOPMENT AUTHORITY

A RESOLUTION APPROVING BROWNFIELD PLAN REDEVELOPMENT AND PURCHASE AGREEMENT

Minutes of a regular meeting of the City of Kalamazoo Brownfield Redevelopment Authority held on June 13, 2019, at 7:30 o'clock a.m., local time, at the City Hall, 241 West South Street, Kalamazoo, Michigan.

PRESENT, Members: Nathan Bolton; Kyle Gulau; Kevan Hess; Mayor Bobby J. Hopewell; Bob Miller; Patti Owens; Doug Phillips; Tom Schlueter

ABSENT, Members: Fritz Brown; Jim Escamilla; Nancy Troff

Recitals:

A. Davis Creek Business Park (DCBP) has gone undeveloped since it was established in 2007 with little interest shown by developers or other businesses seeking to purchase a parcel of land within DCBP.

B. City staff recently received an interest from Davis Creek Land Development Co., LLC, (Owner) in purchasing an approximate 6-acre parcel south and west of Full Circle Drive (Property). Owner will lease the Property to Seven Point Supply, LLC (Seven Point). Owner and Seven Point have the same principal owners and are collectively referred to under the Brownfield Plan Redevelopment and Purchase Agreement (Agreement) as 'Developer'.

C. City staff negotiated the Agreement, which the Board of Directors has reviewed.

D. The City of Kalamazoo (City) is a joint tenant with the City of Kalamazoo Brownfield Redevelopment Authority (BRA). The City will also need to approve the Agreement.

THEREFORE, IT IS RESOLVED as follows:

1. The Brownfield Plan Redevelopment and Purchase Agreement (Agreement) with Davis Creek Land Development Co., LLC and Seven Point Supply, LLC regarding redevelopment and the purchase of that approximate 6-acre portion of DCBP, depicted in Exhibit A, for $120,000 - increased or decreased on a pro-rata

basis after the actual size of the Property is determined by the survey based on $20,000/acre - is approved.

2. The chair is authorized to sign the Agreement and any other document necessary to effectuate the completion of the transaction contemplated by it, with the authority of those city staff members granted under the Limited Power of Attorney dated February 15, 2018 to sign the documents as detailed in that document.

3. The closing on the sale and the transfer of the Property is contingent on the City of Kalamazoo approving the Agreement.

The above resolution was offered by Mayor Bobby J. Hopewell and supported by Nathan Bolton.

AYES, Members: ALL

NAYS, Members: NONE

ABSTAIN, Members: NONE

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City of Kalamazoo Brownfield Redevelopment at a regular meeting held on June 13, 2019. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by the Act.

Joy R. Hills

Joy Hills, Recording Secretary

Commission Agenda Report
City of Kalamazoo

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

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

REVIEWED BY: Steve Vicenzi, Director Management Services / CFO

PREPARED BY: Steve Vicenzi, Director Management Services / CFO

DATE: 6/21/2019

SUBJECT: Ordinance Authorizing Water Supply System Revenue Bonds, Series 2019B

RECOMMENDATION

It is recommended that the City Commission adopt the attached Ordinance Authorizing Water Supply System Junior Lien Revenue Bond, Series 2019B in the amount not to exceed One Million Seven Hundred Thirty Thousand Dollars ($1,730,000) and adopt a Notice of Sale Resolution.

BACKGROUND

The City Commission on March 18th, 2019, adopted a Notice of Intent Resolution to issue Water Supply System Revenue Bonds, Series 2019. This Resolution initiated the process of issuing debt to finance the Water Supply System's FY 2019 Capital Improvement program in the amount not to exceed $12 million, in accordance with the Adopted FY 2019 Budget.

The Ordinance authorizes the issuance of the Bonds in the amount not to exceed $1,730,000 for the purposes of paying the costs of the project, extensions and improvements to the Water Supply System of the City, including water main and service line improvements and replacements, together with all necessary equipment, furnishings and all appurtenances and attachments. The Bonds are payable from the Net Revenues of the City's Water Supply System. The Bonds will be of junior standing as to the Net Revenues with the previous series of Water Supply System Revenue Bonds of the City, as the DWRF program allows the City to make these Bonds junior to the existing series of Water Supply System Revenue Bonds.

The Ordinance contains the mandatory requirements for Revenue Bond Ordinances as required by the Revenue Bond Act, Act 94, Public Acts of Michigan, 1933, as amended. The Ordinance sets forth the terms of the Bonds and provides for a negotiated sale of the Bonds to the Michigan Finance Authority as is required under the DWRF program.

Pursuant to Section 6 of the Revenue Bond Act, the Ordinance may be adopted in one reading, regardless of any contrary provision in the City Charter, and is required to be published in full after approval.

COMMUNITY RESOURCES CONSULTED

The FY 2019 Capital Budget was presented and approved as part of the 2019 annual budget process and reviewed and approved by the City Planning Commission.

FISCAL IMPACT

The annual debt service on this bond issue is included in the City's Adopted FY 2019 Budget.

ALTERNATIVES

Not approving the Resolution is not recommended, because the City would not be able to finance the Adopted FY 2019 Budget Capital Improvement plan for the Water System.

ATTACHMENTS:

	Type	Description
🗋	Ordinances	Junior Lien Water Revenue Bond Ordinance

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. _______

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, IMPROVEMENTS AND EXTENSIONS TO THE WATER SUPPLY SYSTEM OF THE CITY OF KALAMAZOO; TO PROVIDE FOR THE ISSUANCE AND SALE OF JUNIOR LIEN REVENUE BONDS TO PAY THE COST THEREOF; TO PRESCRIBE THE FORM OF THE BONDS; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE AN ADEQUATE RESERVE FUND FOR THE BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF THE REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS OF THE SYSTEM IN ENFORCEMENT THEREOF; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE SYSTEM AND THE BONDS AND THE SYSTEM.

THE CITY OF KALAMAZOO ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

(a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.

(b) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds and payments to the Issuer in lieu of taxes, to which may be made the following adjustments:

(i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect.

(ii) Revenues may be augmented by amounts which may be derived from rates and charges to be paid by new customers of the System.

The adjustment of revenues and expenses by the factors set forth in (i) and (ii) above shall be reported upon by professional engineers or certified public accountants or other experts not in the regular employment of the Issuer.

(c) "Authority" means the Michigan Finance Authority.

(d) “Authorized Officers” means either the City Manager, Deputy City Manager or Director of Management Services and Chief Financial Officer.

(e) “Bonds” means the Series 2019B Bonds, and any additional Bonds of equal standing hereafter issued.

(f) “EGLE” means the Michigan Department of Environment, Great Lakes, and Energy.

(g) “Issuer” or “City” means the City of Kalamazoo, County of Kalamazoo, State of Michigan.

(h) “Junior Lien Bonds” means the Series 2019B Bonds, and any additional bonds that are of equal standing with the Series 2019B Bonds, and junior in standing to the Outstanding Senior Lien Bonds.

(i) “Outstanding Senior Lien Bonds” means the Series 2012 Bonds, the Series 2014 Bonds, the Series 2015 Bonds, the Series 2017 Bonds, the Series 2018 Bonds and the Series 2019 Bonds.

(j) “Outstanding Ordinances” means Ordinances Nos. 1539, 1891, 1919, 1933, 1947, 1948, 1961 and 1989 of the City.

(k) “Project” means the additions, extensions and improvements to the System, including water main and service line improvements and replacements, together with all necessary equipment, furnishings and all appurtenances and attachments.

(l) “Purchase Contract” means the Purchase Contract to be entered into between the Authority and the Issuer relating to the purchase by the Authority of the Series 2019B Bonds.

(m) “Revenues” and “Net Revenues” mean the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with respect to “Revenues”, the earnings derived from the investment of moneys in the various funds and accounts established by the Outstanding Ordinances and this Ordinance.

(n) “Senior Lien Bonds” means the Outstanding Senior Lien Bonds, which have a statutory first lien on the Net Revenues, and any additional bonds of equal standing with the Outstanding Senior Lien Bonds hereafter issued.

(o) “Series 2012 Bonds” means the Water Supply System Revenue Refunding Bonds, Series 2012, dated June 5, 2012, in the outstanding principal amount of Five Hundred Fifty-Five Thousand Dollars ($555,000).

(p) “Series 2014 Bonds” means the Water Supply System Revenue Refunding Bonds, Series 2014, dated May 1, 2014, in the outstanding principal amount of Ten Million Fifteen Thousand Dollars ($10,015,000).

(q) "Series 2015 Bonds" means the Water Supply System Revenue Bonds, Series 2015, dated December 10, 2015, in the outstanding principal amount of Two Million Seven Hundred Forty-Five Thousand Dollars ($2,745,000).

(r) "Series 2017 Bonds" means the Water Supply System Revenue Refunding Bonds, Series 2017, dated May 2, 2017, in the outstanding principal amount of Seven Million Two Hundred Sixty-Five Thousand Dollars ($7,265,000).

(s) "Series 2018 Bonds" means the Water Supply System Revenue Bonds, Series 2018, dated May 23, 2018, in the outstanding principal amount of Nine Million Three Hundred Ninety-Five Thousand Dollars ($9,395,000).

(t) "Series 2019 Bonds" means the Water Supply System Revenue Bonds, Series 2019, dated June 25, 2019, in the outstanding principal amount of Ten Million Two Hundred Seventy Thousand Dollars ($10,270,000).

(u) "Series 2019B Bonds" means the Water Supply System Junior Lien Revenue Bonds, Series 2019B, authorized pursuant to this ordinance.

(v) "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which, without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(w) "Supplemental Agreement" means the supplemental agreement among the Issuer, the Authority and EGLE relating to the Series 2019B Bonds.

(x) "System" means the entire Water Supply System of the City as defined in the Outstanding Ordinances.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the Issuer to acquire and construct the Project in accordance with the plans and specifications prepared by the Issuer's consulting engineers, which plans and specifications are hereby approved. The Project qualifies for the Drinking Water Revolving Fund financing program being administered by EGLE and the Authority, whereby bonds of the Issuer are sold to the Authority and bear interest at a fixed rate of not to exceed two and one-half percent (2.50%) per annum..

Section 3. Costs; Useful Life. The cost of the Project is estimated to be One Million Seven Hundred Thirty Thousand Dollars ($1,730,000), including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved. The Issuer does hereby estimate the period of usefulness of the Project to be at least twenty (20) years.

Section 4. Payment of Cost; Bonds Authorized. To pay the costs associated with acquiring and constructing the Project, including all legal, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2019B Bonds, the Issuer shall borrow the sum of not to exceed One Million Seven Hundred Thirty Thousand Dollars ($1,730,000), and issue the Series 2019B Bonds pursuant to the provisions of Act 94. The remaining costs, if any, shall be defrayed from System funds on hand and legally available for such use.

Except as amended by or expressly provided to the contrary in this Ordinance, all of the provisions of the Outstanding Ordinances shall apply to the Series 2019B Bonds issued pursuant to this Ordinance, the same as though each of said provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of additional revenue bonds of subordinate lien with respect to the Outstanding Senior Lien Bonds to finance the cost of acquiring additions, extensions and improvements to the System, additional bonds of subordinate standing and priority of lien as to the Outstanding Bonds for such purpose being authorized by the provisions of the Outstanding Ordinances, upon the conditions therein stated, which conditions have been fully met.

Section 5. Issuance of Series 2019B Bonds; Details. The Series 2019B Bonds of the Issuer, to be designated **WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2019B**, are authorized to be issued in the aggregate principal sum of not to exceed One Million Seven Hundred Thirty Thousand Dollars ($1,730,000), as finally determined by order of EGLE for the purpose of paying part of the cost of the Project, including the costs incidental to the issuance, sale and delivery of the Series 2019B Bonds. The Series 2019B Bonds shall be payable out of the Net Revenues, as set forth more fully in Section 8 hereof, provided that the Series 2019B Bonds shall be subordinate to the prior lien with respect to the Net Revenues in favor of the Outstanding Senior Lien Bonds and of any additional bonds of equal standing with the Outstanding Senior Lien Bonds hereafter issued. The Series 2019B Bonds shall be in the form of a single fully-registered, nonconvertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery, payable in principal installments as finally determined by the order of EGLE at the time of sale of the Series 2019B Bonds and approved by the Authority and an Authorized Officer. Principal installments of the Series 2019B Bonds shall be payable on October 1 of the years 2020 through 2039, inclusive, or such other payment dates as hereinafter provided. Interest on the Series 2019B Bonds shall be payable on April 1 and October 1 of each year, commencing April 1, 2020 or on such other interest payment dates as hereinafter provided. Final determination of the principal amount of and interest on the Series 2019B Bonds and the payment dates and amounts of principal installments of the Series 2019B Bonds shall be evidenced by execution of the Purchase Contract and each of the Authorized Officers is authorized and directed to execute and deliver the Purchase Contract when it is in final form and to make the determinations set forth above; provided, however, that the first principal installment shall be due no earlier than October 1, 2020 and the final principal installment shall be due no later than October 1, 2042 and that the total principal amount shall not exceed $1,730,000.

The Series 2019B Bonds shall bear interest at a rate of not to exceed two and one-half percent (2.50%) per annum on the par value thereof or such other rate as evidenced by execution of the Purchase Contract, but in any event not to exceed the rate permitted by law, and any Authorized Officers as shall be appropriate shall deliver the Series 2019B Bonds in accordance with the delivery instructions of the Authority.

The principal amount of the Series 2019B Bonds is expected to be drawn down by the Issuer periodically, and interest on principal amount shall accrue from the date such principal amount is drawn down by the Issuer.

The Series 2019B Bonds shall not be convertible or exchangeable into more than one fully-registered bond. Principal of and interest on the Series 2019B Bonds shall be payable as provided in the Series 2019B Bond form in this Ordinance.

The Series 2019B Bonds shall be subject to optional redemption by the Issuer with the prior written approval of the Authority and on such terms as may be required by the Authority.

The Finance Director shall record on the registration books payment by the Issuer of each installment of principal or interest or both when made and the cancelled checks or other records evidencing such payments shall be returned to and retained by the Finance Director.

Upon payment by the Issuer of all outstanding principal of and interest on the Series 2019B Bonds, the Authority shall deliver the Series 2019B Bonds to the Issuer for cancellation.

Section 6. Execution of Series 2019B Bonds. The Series 2019B Bonds shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the City Clerk and shall have the corporate seal of the Issuer or a facsimile thereof impressed thereon. The Series 2019B Bonds bearing the manual signatures of the Mayor and the City Clerk sold to the Authority shall require no further authentication.

Section 7. Registration and Transfer. Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, 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 Issuer 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 payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 2019B Bonds contained in Section 13 of this Ordinance and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. The Issuer shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Issuer; and upon presentation for such purpose the transfer agent shall under such reasonable regulations as it may prescribe transfer or cause to be transferred on said books Bonds as hereinbefore provided.

If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the transfer agent of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the Issuer, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the transfer agent may pay the same without surrender thereof.

Section 8. Payment of Series 2019B Bonds; Security; Priority of Lien. Principal of and interest on the Series 2019B Bonds shall be payable from the Net Revenues. There is hereby recognized the statutory lien upon the whole of the Net Revenues created by this Ordinance which shall be a lien that is junior and subordinate to the lien of the Senior Lien Bonds created by the Outstanding Ordinances, to continue until payment in full of the principal of and interest on all Bonds payable from the Net Revenues, or until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Bonds of a series then outstanding, principal and interest on such Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to that series of Bonds, the holders of that series shall have no further rights under the Outstanding Ordinances or this Ordinance except for payment from the deposited funds, and the Bonds of that series shall no longer be considered to be outstanding under the Outstanding Ordinances or this Ordinance.

Section 9. Management; Fiscal Year. The operation, repair and management of the System and the acquiring and constructing of the Project shall continue to be under the supervision and control of the Issuer. The Issuer may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The Issuer may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System. The System shall be operated on the basis of an operating year which shall coincide with the Issuer's fiscal year.

Section 10. Rates and Charges; No Free Service. The rates and charges for service furnished by the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm, or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

Section 11. Funds and Accounts; Flow of Funds; Junior Lien Bond and Interest Redemption Fund. The funds and accounts established by the Outstanding Ordinances are hereby continued, provided that a Junior Lien Bond and Interest Redemption Fund shall be established as follows:

There shall be established and maintained a separate depository fund designated "Junior Lien Bond and Interest Redemption Fund" (the "Junior Lien Fund"), the moneys on deposit therein from time to time to be used solely for the purpose of paying the principal of, redemption premiums (if any) and interest on the Series 2019B Bonds, and any bonds of equal standing with the Series 2019B Bonds.

Out of the Net Revenues remaining in the Receiving Fund after provision has been made for the Operation and Maintenance Fund and only after provision has been made for the Redemption Fund, there shall be set aside monthly in the Junior Lien Fund a sum proportionately sufficient to provide for the payment when due of the current principal of and interest on the Series 2019B Bonds, less any amount in the Junior Lien Fund representing accrued interest on the Series 2019B Bonds. Commencing on October 1, 2019, the amount set aside each month for interest on the Series 2019B Bonds shall be 1/6 of the total amount of interest on the Series 2019B Bonds next coming due. The amount set aside each month for principal on the Series 2019B Bonds, commencing October 1, 2019, shall be 1/12 of the amounts of principal next coming due. If there is any deficiency in the amounts previously set aside, that deficiency shall be added to the next succeeding months' requirements.

No moneys shall be set aside and credited to the Junior Lien Fund unless and until the Issuer is current with respect to all required transfers to all other funds under the Outstanding Ordinances and there is no default in any payments or requirements under the Outstanding Ordinances.

If for any reason there is a failure to make such quarterly deposit in the amounts required, then the entire amount of the deficiency shall be set aside and deposited in the Junior Lien Bond Redemption Account out of the Revenues first received thereafter which are not required by this Ordinance to be deposited in the Operation and Maintenance Account or the Bond and Interest Redemption Fund or the Junior Lien Bond Redemption Account, which amount shall be in addition to the regular monthly deposit required during such succeeding month or months.

Section 12. Bond Proceeds. The proceeds of the sale of the Series 2019B Bonds as received by the Issuer shall be deposited in a separate account in a bank or banks qualified to act as depository of the proceeds of sale under the provisions of Section 15 of Act 94 designated WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BONDS CONSTRUCTION FUND (the "Construction Fund"). Moneys in the Construction Fund shall be applied solely in payment of the cost of the Project and any engineering, legal and other expenses incident thereto and to the financing thereof.

Section 13. Bond Form. The Series 2019B Bonds shall be in substantially the following form with such changes or completion as necessary or appropriate to give effect to the intent of this Ordinance, and further subject to such modifications which may be required by the Michigan Attorney General and the Authority and approved by bond counsel:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF KALAMAZOO

CITY OF KALAMAZOO
WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2019B

REGISTERED OWNER: Michigan Finance Authority

PRINCIPAL AMOUNT: ______________________ Dollars ($____________)

DATE OF ORIGINAL ISSUE: August 30 2019

The City of Kalamazoo, County of Kalamazoo, State of Michigan (the “City”), for value received, hereby promises to pay, primarily out of the hereinafter described Net Revenues of the City’s Water Supply System (hereinafter defined), to the Michigan Finance Authority (the “Authority”), or registered assigns, the Principal Amount shown above, or such portion thereof as shall have been advanced to the City pursuant to a Purchase Contract between the City and the Authority and a Supplemental Agreement by and among the City, the Authority and the State of Michigan acting through the Department of Environment, Great Lakes and Energy, in lawful money of the United States of America, unless prepaid or reduced prior thereto as hereinafter provided.

During the time the Principal Amount is being drawn down by the City under this bond, the Authority will periodically provide to the City a statement showing the amount of principal that has been advanced and the date of each advance, which statement shall constitute prima facie evidence of the reported information; provided that no failure on the part of the Authority to provide such a statement or to reflect a disbursement or the correct amount of a disbursement shall relieve the City of its obligation to repay the outstanding Principal Amount actually advanced (subject to any principal forgiveness as provided for in Schedule A), all accrued interest thereon, and any other amount payable with respect thereto in accordance with the terms of this bond.

The Principal Amount shall be payable on the dates and in the annual principal installment amounts set forth on the Schedule attached hereto and made a part hereof, as such Schedule may be adjusted if less than $____________ is disbursed to the City or if a portion of the Principal Amount is prepaid as provided below, with interest on said principal installments from the date each said installment is delivered to the holder hereof until paid at the rate of two percent (2.00%) per annum. Interest is first payable on April 1, 2020, and semiannually thereafter on the first day of April and October of each year, as set forth in the Purchase Contract.

Notwithstanding any other provision of this Bond, so long as the Authority is the owner of this Bond, (a) this Bond is payable as to principal, premium, if any, and interest at The Bank of New York Mellon Trust Company, N.A. or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository"); (b) the City agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this Bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; in the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment; and (c) written notice of any redemption of this Bond shall be given by the City and received by the Authority's Depository at least 40 days prior to the date on which such redemption is to be made.

Additional Interest

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this bond but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the Authority has been fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the City's default. Such additional interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority) the investment of amounts in the reserve account established by the Authority for the bonds of the Authority issued to provide funds to purchase this bond fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the City shall and hereby agrees to pay on demand only the City's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.

For prompt payment of principal and interest on this bond, the City has irrevocably pledged the revenues of the Water Supply System of the City, including all appurtenances, extensions and improvements thereto (the "Water Supply System"), after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), and a statutory lien thereon is hereby recognized and created which is junior in standing and priority of lien as to the prior lien of the City's (a) Water Supply System Revenue Refunding Bonds, Series 2012, (b) Water Supply System Revenue Refunding Bonds, Series 2014, (c) Water Supply System Revenue Bonds, Series 2015, (d) Water Supply System Revenue and Revenue Refunding Bonds, Series 2017, (e) Water Supply System Revenue Bonds, Series 2018 and (f) Water Supply System Revenue Bonds, Series 2019 (together the "Outstanding Bonds") of the City and of any additional bonds of the City of equal standing and priority of lien with the Outstanding Bonds.

This bond is a single, fully-registered, non-convertible bond in the principal sum indicated above issued pursuant to Ordinances Nos. 1539, 1891, 1919, 1933, 1947, 1948, 1961, 1989 and ____duly adopted by the City Commission of the City (the "Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying part of the cost of acquiring and constructing additions, extensions and improvements to the Water Supply System of the City.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of superior and equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinances.

This bond is a self-liquidating bond, payable, both as to principal and interest, solely and only from the Net Revenues of the Water Supply System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

The City has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the Water Supply System shall be outstanding, such rates for service furnished by the Water Supply System as shall be sufficient to provide for payment of the interest upon and the principal of this bond and any bonds of equal standing with this bond, the Outstanding Bonds and any additional bonds of equal standing with the Outstanding Bonds, as and when the same shall become due and payable, and to maintain a bond redemption fund (including, except for bonds of this issue, a bond reserve account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the Water Supply System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the Water Supply System as are required by the Ordinances.

Principal installments of this bond are subject to prepayment by the City prior to maturity only with the prior written consent of the Authority and on such terms as may be required by the Authority.

This bond is transferable only upon the books of the City by the registered owner in person or 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 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 Ordinance, and upon 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 have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the City of Kalamazoo, County of Kalamazoo, State of Michigan, by its City Commission, has caused this bond to be executed with the facsimile signatures of its Mayor and its City Clerk and a facsimile of its corporate seal to be printed on this bond, all as of the Date of Original Issue.

CITY OF KALAMAZOO

By: _________________________
Mayor

(Seal)

Countersigned:

____
City Clerk

DEQ Project No. 7451-01
DEQ Approved Amt. $1,730,000*

SCHEDULE A

Based on the schedule provided below unless revised as provided in this paragraph, repayment of the principal of the bond shall be made until the full amount advanced to the City is repaid. In the event the Order of Approval issued by the Department of Environment, Great Lakes and Energy (the "Order") approves a principal amount of assistance less than the amount of the bond delivered to the Authority, the Authority shall only disburse principal up to the amount stated in the Order. In the event (1) that the payment schedule approved by the City and described below provides for payment of a total principal amount greater than the amount of assistance approved by the Order or (2) that less than the principal amount of assistance approved by the Order is disbursed to the City by the Authority, the Authority shall prepare a new payment schedule which shall be effective upon receipt by the City.

Principal Installment Due on	Amount of Principal Installment
October 1, 2020	$70,000
October 1, 2021	75,000
October 1, 2022	75,000
October 1, 2023	75,000
October 1, 2024	75,000
October 1, 2025	80,000
October 1, 2026	80,000
October 1, 2027	80,000
October 1, 2028	85,000
October 1, 2029	85,000
October 1, 2030	85,000
October 1, 2031	90,000
October 1, 2032	90,000
October 1, 2033	90,000
October 1, 2034	95,000
October 1, 2035	95,000
October 1, 2036	100,000
October 1, 2037	100,000
October 1, 2038	100,000
October 1, 2039	105,000

Interest on the Bond shall accrue on that portion of principal disbursed by the Authority to the City pursuant to the Order from the date such portion is disbursed, until paid, at the rate of 2.00% per annum, payable April 1, 2020, and semi-annually thereafter.

The City agrees that it will deposit with The Bank of New York Mellon Trust Company, N.A., or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository") payments of the principal of, premium, if any, and interest on this Bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise. In the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment.

Section 14. Bondholders' Rights; Receiver. The holder or holders of the Bonds representing in the aggregate not less than twenty per cent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the Issuer, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest upon the Series 2019B Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the Issuer and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the Issuer more particularly set forth herein and in Act 94.

The holder or holders of the Series 2019B Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Series 2019B Bonds and the security therefor.

Section 15. Additional Bonds. The Issuer may issue additional bonds of equal standing with the Series 2019B Bonds for the following purposes and subject to the following conditions:

(a) To complete the Project in accordance with the plans and specifications therefor. Such bonds shall not be authorized unless the engineers in charge of construction shall execute a certificate evidencing the fact that additional funds are needed to complete the Project in accordance with the plans and specifications therefor and stating the amount that will be required to complete the Project. If such certificate shall be so executed and filed with the Issuer, it shall be the duty of the Issuer to provide for and issue additional revenue bonds in the amount stated in said certificate to be necessary to complete the Project in accordance with the plans and specifications plus an amount necessary to issue such bonds or to provide for part or all of such amount from other sources.

(b) For subsequent repairs, extensions, enlargements and improvements to the System or for subsequent repairs, extensions, enlargements and improvements to the System and for the purpose of refunding part or all of the Junior Lien Bonds then outstanding and paying costs of issuing such additional Junior Lien Bonds. Junior Lien Bonds for such purposes shall not be issued pursuant to this subparagraph (b) unless the Adjusted Net Revenues of the System for the then last two (2) preceding twelve-month operating years or the Adjusted Net Revenues for the last preceding twelve-month operating year, if the same shall be lower than the average, shall be equal to at least one hundred percent (100%) of the maximum amount of principal and interest thereafter maturing in any operating year on the then outstanding Senior Lien Bonds, Junior Lien Bonds and on the additional Bonds then being issued. If the additional Junior Lien Bonds are to be issued in whole or in part for refunding outstanding Junior Lien Bonds, the annual principal and interest requirements shall be determined by deducting from the principal and interest requirements for each operating year the annual principal and interest requirements of any Junior Lien Bonds to be refunded from the proceeds of the additional

Junior Lien Bonds. For purposes of this subparagraph (b) the Issuer may elect to use as the last preceding operating year any operating year ending not more than sixteen months prior to the date of delivery of the additional Junior Lien Bonds and as the next to the last preceding operating year, any operating year ending not more than twenty-eight months prior to the date of delivery of the additional Junior Lien Bonds. Determination by the Issuer as to existence of conditions permitting the issuance of additional Junior Lien Bonds shall be conclusive. No additional Junior Lien Bonds of equal standing as to the Net Revenues of the System shall be issued pursuant to the authorization contained in this subparagraph if the Issuer shall then be in default in making its required payments to the Operation and Maintenance Fund or the Redemption Fund.

(c) For refunding a part or all of the Junior Lien Bonds then outstanding and paying costs of issuing such additional Junior Lien Bonds including deposits which may be required to be made to the bond reserve account for such Junior Lien Bonds. No additional Junior Lien Bonds shall be issued pursuant to this subsection unless the maximum amount of principal and interest maturing in any operating year after giving effect to the refunding shall be less than the maximum amount of principal and interest maturing in any operating year prior to giving effect to the refunding.

Section 16. Negotiated Sale; Application to EGLE and Authority; Execution of Documents. The Issuer determines that it is in the best interest of the Issuer to negotiate the sale of the Series 2019B Bonds to the Authority because the Drinking Water Revolving Fund financing program provides significant interest savings to the Issuer compared to competitive sale in the municipal bond market. The Authorized Officers are hereby authorized to make application to the Authority and to the MDEQ for placement of the Series 2019B Bonds with the Authority. The actions taken by the Authorized Officers with respect to the Series 2019B Bonds prior to the adoption of this Ordinance are ratified and confirmed. The Authorized Officers are authorized to execute and deliver the Purchase Contract, the Supplemental Agreement and the Issuer's Certificate. Any Authorized Officer is further authorized to execute and deliver such contracts, documents and certificates as are necessary or advisable to qualify the Series 2019B Bonds for the Drinking Water Revolving Fund. Prior to the delivery of the Series 2019B Bonds to the Authority, any Authorized Officer is hereby authorized to make such changes to the form of the Series 2019B Bonds contained in Section 13 of this Ordinance as may be necessary to conform to the requirements of Act 227, Public Acts of Michigan 1985, as amended ("Act 227"), including, but not limited to changes in the principal maturity and interest payment dates and references to additional security required by Act 227.

Section 17. Covenant Regarding Tax Exempt Status of the Bonds. The Issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Series 2019B Bonds from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) 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 Series 2019B Bonds proceeds and moneys deemed to be Bond proceeds.

Section 18. Approval of Bond Counsel. The representation of the Issuer by Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), as bond counsel is hereby approved, notwithstanding the representation by Miller Canfield of the Authority in connection with the Drinking Water Revolving Fund program which may include advising the Authority with respect to this borrowing.

Section 19. Approval of Bond Details. The Authorized Officers are each hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, 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, and other matters, provided that the principal amount of Series 2019B Bonds issued shall not exceed the principal amount authorized in this Ordinance, the interest rate per annum on the Series 2019B Bonds shall not exceed two and one-half percent (2.50%) per annum, and the Series 2019B Bonds shall mature in not more than twenty (20) annual installments.

Section 20. Savings Clause. All ordinances, resolutions or orders, or part thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, repealed.

Section 21. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 22. Publication and Recordation. This Ordinance shall be published in full in the *Kalamazoo Gazette*, a newspaper of general circulation in the Issuer qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the Issuer and such record authenticated by the signatures of the Mayor and the City Clerk.

Section 23. Effective Date. Pursuant to the provisions of Section 6 of Act 94, this Ordinance shall be approved on the date of first reading and accordingly this Ordinance shall immediately be effective upon its adoption.

Adopted and signed this 1st day of July, 2019.

Signed: ________________________
Mayor

Signed: ________________________
City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Commission of the City of Kalamazoo, County of Kalamazoo, Michigan, at a Regular Meeting held on the 1st day of July, 2019, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

I further certify that the following Members were present at said meeting: ______ ____ and that the following Members were absent: _______________________________________.

I further certify that Member ________________ moved adoption of said Ordinance, and that said motion was supported by Member ________________________.

I further certify that the following Members voted for adoption of said Ordinance: ____ and that the following Members voted against adoption of said Ordinance: ____________ ____.

I further certify that said Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and City Clerk.

____
City Clerk

33844943.1\046053-00225

Commission Agenda Report
City of Kalamazoo

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

FROM: Scott A Borling, City Clerk

DATE: 6/24/2019

SUBJECT: City Clerk's Report

INFORMATIONAL ITEMS

Attached for your information is a citizen proposal submitted by Mr. Chris Wahmhoff regarding designated camping areas for persons experiencing homelessness. This request was submitted under the provisions of City Commission Rule #7, which states:

> All written proposals by residents of the City of Kalamazoo seeking City Commission action on matters not currently being considered shall be filed with the City Clerk, and shall be included in a City Clerk's agenda report within 21 days of receipt.

The City Clerk's Office received the attached proposal the week of June 17th.

ATTACHMENTS:

Type	Description
Correspondence	Citizen Request - Designated Camping Areas

to be brought to the city commissron

Given that there is now a waiting list for women and children at the Gospel Mission, and that they have confirmed they are now turning away families I urge the Commission to enact a homeless moritorium on camping in a designated space like Blaine st. to also

- Provide ~~[illegible]~~ a safe space that atleast allows for people to camp, and sleep ~~[illegible]~~

- A central space for Social services to visit
- for this moritorium to last until we can provride space for families

and I hope Kalamazoo will consider amending our lack of affordable buildings issues in our zoning

Commission Agenda Report

City of Kalamazoo

TO:	Mayor Hopewell, Vice Mayor Knott, and City Commissioners
FROM:	James K. Ritsema, ICMA-CM, City Manager
REVIEWED BY:	Steve Vicenzi, Management Services Director / CFO
PREPARED BY:	Stephanie McGowan, CIty Treasurer
DATE:	6/21/2019
SUBJECT:	Investment Policy Revision

RECOMMENDATION

It is recommended the City Commission approve the revised Investment Policy. The document is a communication tool for staff, elected officials, financial institutions, rating agencies, bond holders and other stakeholders of the Cities investment guidelines and priorities.

BACKGROUND

The purpose of the Investment Policy is to establish the parameters for investing government funds and identifies the investment objectives, tolerance for risk, constraints on the investment portfolio, and how the investment program will be managed and monitored.

The City last revised the Investment Policy in 2001. The updated policy includes changes made to the State of Michigan Public Act 20 of 1943, as amended by Act 196 of 1997; being Sections 129.91 through 129.93 of the Michigan Compiled Laws, Act No. 367 of the Public Acts of 1982 and in accordance with the objectives and procedures set forth in the policies and any written administrative procedures. The changes to the policy include giving the City the ability to join investment pools organized under the local government investment pool act of 1985.

FISCAL IMPACT

The objective of the policy is to invest surplus funds in a manner which will provide the highest investment return, with maximum security, while meeting the daily cash flow demands of the City. The adoption of the Investment Policy does not have any direct fiscal impact but allows for additional investment options to earn higher yields on idle funds.

ALTERNATIVES

The City Commission may choose to approve the policy as presented, propose changes, or not to approve the policy. Not approving the policy is not recommended as the current policy does not allow for all currently available investment options.

ATTACHMENTS:

	Type	Description
🗋	Policy	Investment Policy

PURPOSE:

The purpose of the Investment Policy is to establish the investment objectives, delegation of authority, standards of investing, eligible investments, internal controls, reporting requirements, safekeeping and procedures necessary for the management of City Funds.

POLICY:

Funds of the City of Kalamazoo shall be invested in accordance with the State of Michigan Public Act 20 of 1943, as amended by Act 196 of 1997; being Sections 129.91 through 129.93 of the Michigan Compiled Laws, Act No. 367 of the Public Acts of 1982 and in accordance with the objectives and procedures set forth in the policies and any written administrative procedures. Funds for the perpetual care and maintenance of City Cemeteries shall be invested in accordance with the State of Michigan Public Act 422 of 2014; being Sections 128.3 and 128.4 of the Michigan Compiled Laws.

This Statement of investment policies, procedures and objectives is issued by the City Commission of the City of Kalamazoo, Michigan. It is the policy of City of Kalamazoo to invest surplus funds in a manner which will provide the highest investment return with maximum security, while meeting the daily cash flow demands of the City.

SCOPE:

The investment policy applies to all financial assets held by the City of Kalamazoo, except pension funds, deferred compensation funds, and special purpose funds for which investment authority has been explicitly granted elsewhere by the City. Available liquid cash assets are those assets that are not currently required for payment of any debt, accounts payable, payroll, legal obligation, or other immediate cash disbursements.

A. Prudence

Investments shall be made with the judgement and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for the speculation, but for investment, and consideration of both the safety of capital as well as income to be derived.

Officials executing investment transactions shall act according to the investment policies and written procedures of the City. Investment officials shall conduct the investment strategy according to the “prudent person” standard in managing the overall portfolio for the City. While exercising due diligence in investment management, investment officials shall be relieved of personal responsibility for an individual security's credit risk or market price changes. Deviations from expectations should be reported in a timely fashion and appropriate action taken to control adverse developments.

B. Ethics and Conflict of Interest

All officials and employees involved in the investment activities of the City shall refrain from personal business activity that could either conflict with the proper execution and management of the City's investment process or impair their ability to make impartial decisions for the benefit of the City. In addition, any official or employee conducting investment activities for the City shall disclose any material financial interests in the financial institutions conducting business within the City and further disclose any large personal financial positions that would affect the performance of the City portfolio, particularly at the time of purchase or sale of portfolio securities.

C. Delegation of Authority

Authority to receive, deposit, manage and invest funds for the City is delegated to the City Treasurer under Section 50 of the Kalamazoo City Charter. The City Treasurer may delegate investment responsibilities to personnel within the Treasurer's Division with the written approval of the Finance Director provided that such personnel is adequately trained and bonded. Further, in the absence of the City Treasurer, banking and investment activities shall be delegated to the Assistant Treasurer of the City. All investment activities shall be conducted in a manner provided under this policy and any procedures established by the Treasurer.

The City Treasurer shall be responsible for all transactions undertaken and shall establish a system of internal controls and procedures to regulate the investment activities of any designated subordinates. To the extent the City Treasurer is responsible for the investment program under this policy; they and staff shall not be liable for any losses.

1. Objectives

The primary objectives of the City's investment activities shall be in the following order:

A. Safety & Preservation:
   1. Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.

   2. The City shall mitigate the two types of risks in the preservation of capital, credit risk and market risks.

      a. Credit Risk:
         This is the risk of loss due to failure of the issuer of the investment security. The City shall moderate this risk by limiting investments to the safest types of securities and diversifying the investment portfolio so that potential losses on individual securities will be minimized diversifying its portfolio so that no one issuer would harm the City's ability to satisfy its financial commitments.

      b. Market Risk:
         This is risk due to market value changes when interest rates fluctuate. The City shall mitigate these risks by structuring the investment portfolio so that investments mature to meet cash requirements for ongoing operations and investing operating funds primarily in shorter-term securities, money market mutual funds, or similar investment pools limiting the average portfolio length to three years or less and no individual security shall have a maturity of more than five years.

B. Diversification:
   1. To attain this objective, the City will diversity its investments by investing funds among a variety of instruments offering independent returns and financial institutions. The City shall seek to diversify its portfolio so that any potential losses on any individual security do not exceed the overall income from the remaining portfolio.

C. Liquidity:
   1. The City's investment portfolio will remain sufficiently liquid to meet essential financial liabilities as well as providing funds for unanticipated situations. This is accomplished by structuring the portfolio so that investments mature concurrent with cash needs to meet anticipated demands. The Treasurer may analyze the historical and current fiscal year cash flows in order to time investments to meet operating requirements.

D. Return on Investments:

1. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The City's investment policy objective is to maximize the return on investment throughout the budgetary and economic cycles while avoiding unreasonable investment risk. The return is commensurate with the City's risk constraints and the cash flow characteristics of the investment portfolio. The core of investments is to be invested in relatively low risk instruments in anticipation of earning a fair return relative to risk being assumed.

E. Maintain the Public's Trust:

1. All participants in the investment process shall seek to act responsible as custodians of the public trust. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. In addition, the overall investment program shall be designed and managed with a degree of professionalism worthy of the public trust. Investment officials shall also avoid any transaction that might knowingly impair public confidence in the City's ability to govern effectively.

3. Reporting and Performances

The City Treasurer shall report, at least on a quarterly basis, the performance of the investment portfolio to the Finance Director for inclusion in the City Managers report to the City Commission. The reports will include the types of investments, characteristics of the investments (settlement and maturity dates, call dates, coupon payments, etc.), and the performance of the portfolio for the period. In addition, the report will reflect the amounts and percentages placed with an individual financial institution and the City's portfolio performance with the benchmark used as specified in this policy.

A. Any material deviation shall be reported immediately to the Finance Director, who shall report same to the City Manager.

4. Delegation of Authority

Authority to receive, deposit, manage and invest funds for the City is delegated to the City Treasurer under Section 50 of the Kalamazoo City Charter. The City Treasurer may delegate investment responsibilities to personnel within the Treasurer's Division with the written approval of the Finance Director provided that such personnel is adequately trained and bonded. Further, in the absence of the City Treasurer, banking and investment activities shall be delegated to the Assistant

Treasurer of the City. All investment activities shall be conducted in a manner provided under this policy and any procedures established by the Treasurer.

A. Responsibility:

1. The City Treasurer shall be responsible for all transactions undertaken and shall establish a system of internal controls and procedures to regulate the investment activities of any designated subordinates. To the extent the City Treasurer is responsible for the investment program under this policy; they and responsible staff shall not be liable for any losses.

5. Ethical Standards

All officials and employees involved in the investment activities of the City shall refrain from personal business activity that could either conflict with the proper execution and management of the City's investment process or impair their ability to make impartial decisions for the benefit of the City. In addition, any official or employee conducting investment activities for the City shall disclose any material financial interests in the financial institutions conducting business within the City and further disclose any large personal financial positions that would affect the performance of the City portfolio, particularly at the time of purchase or sale of portfolio securities.

6. Authorized Institutions and Financial Dealers

The City Treasurer will maintain a list of financial institutions authorized to serve as depositories and a list of broker dealers to provide investments to the City. The City Treasurer will modify this list as needed and submit the list to the City Commission for approval to provide investment services and placements of City funds. The City shall only do business with banks, saving and loans, savings banks, credit unions, and with broker dealers registered with the State of Michigan Office of Financial and Insurance Regulation (OFIR). The City Treasurer shall determine the depository of City funds as established by the state statutes. All financial institutions shall exhibit financial strength and stability and are sufficiently capitalized to make markets in the investments appropriate to the City needs. The Treasurer shall investigate all financial institutions for financial condition to make recommendations to the City Commission for approval.

7. Authorized and Suitable Investments

The City is empowered under Public Act 20 of 1943 and PA 217 of 1982 being section 129.91 of the Michigan Complied Laws and any amendments enacted after to adoption of the policy, to invest in the following types of instruments:

A. U.S Government Obligations

1. Bonds, securities, and other obligations of the United States or an agency instrumentality of the United States. Obligations of the United States Government U.S. Treasury Bills, Bonds and Notes, which are fully guaranteed by the United States and the obligations issued by U.S. Federal agencies. There are no portfolio investment limitations in this category although a five-year maturity limitation is applicable.

B. Certificates of Deposits, Savings Accounts, Deposit Accounts or Depository Receipts of a financial institution

1. Negotiable Certificates of Deposit not exceeding 5 years from the date of trade settlement, savings accounts or deposit accounts in financial institutions as defined in MCL 129.16, “Depositories for Public Money”, that are eligible to be a depository for the State of Michigan. Accounts, or deposits accounts exceeding the federally insured amount may be acquired only from financial institutions having a bank credit rating of 30 or better by the SNL Financial or its successor firm, for the most recent quarter.

C. Certificate of Deposit Account Registry Service (CDARS)

1. CDARS is comprised of a network of participating banks. When an amount greater than the federally (FDIC) insured limit of $250,000 is deposited with a participating bank, that amount is broken into smaller amounts less than $250,000 and placed into CD’s issued by other banks in the network. The banks are spread across the United States and will not always have a presence in the State of Michigan.

D. Commercial Paper

1. Commercial Paper (C/P) is a short-term obligation (issued by major corporations) with maturities ranging from 2 to 270 days. Commercial paper rated at the time of purchase within the 2 highest classifications established by not less than 2 standard rating services. These investments are limited to 25**%** of any one City fund with maturity limited to 270 days.

E. Banker's Acceptance
   1. The investment is backed by the credit of the issuing bank, the credit of the company purchasing goods, and the purchased inventory. The City would be limited to U.S. banks rated at the least A-1 by Standard and P-1 Poor's or Moody's, or F1 by Fitch at the time of purchase. . These investments are limited to the strongest banks in the world, domestic or regional U.S. banks. The total City investment in BA is limited to 25% of all investments and a maximum maturity of 180 days.

F. Repurchase Agreements
   1. Repurchase agreements (REPO) may be negotiated with the banks and broker dealers. The REPO's shall only be comprised of U.S. Treasury of Federal Agency securities with maturities up to 90 days consisting of instruments listed in (a). In the event that the City Treasurer chooses to invest in repurchase agreements, a Master Repurchase Agreement must be signed with the appropriate bank or dealer, which will minimally address the following:
      a. All REPO transactions must comply with Public Act 20 of the State of Michigan.
      b. The securities of the REPO shall be periodically valued at the market.
      c. The market value of the securities used as collateral for the REPO shall not fall below 102% of the market value. Should the market value fall below the 102% collateral lead, the City will have rights equal to additional cash or securities to match the appropriate 102% level of the REPO.
      d. The City shall have rights to liquidate the REPO in the event of default by the seller.
      e. An independent third party shall retain custody of the securities underlying the REPO agreement.
      f. Rights and specifications regarding substitution of securities shall be determined by the City.
      g. The City shall have the right to remedial actions should violation of the REPO occur.

G. Michigan Municipal Obligations
   1. Obligations of this state or any of its political subdivisions that at the time of purchase are rated as investment grade by not less than 1 standard rating service.

H. Money Market Mutual Funds
   1. Mutual funds registered under the investment company act of 1940, title I of chapter 686, 54 Statute 789, 15 USC 80a-1 to 80a-3 and 80a-4 to 80a-64, with the authority to purchase only investment vehicles that are legal for direct investment by the City. Composed of the investment vehicles described above. This authorization is limited to securities whose intention is to maintain a net asset value of $1.00 per share.

I. Joint Inter-local Investment Ventures
   1. Organized under the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA7, MCL 124.501 to 124.512 that are “no-load”; and seek to maintain a constant net asset value per share of $1.00; limit assets of the fund to securities authorized in MCL 129.91 as legal investments for municipalities, and are rated wither AAA by Standard and Poor’s, Aaa by Moody’s or AAA/V1+ by Fitch. Not more than 50% of the City’s total portfolio may be invested in investment pools at any one time.

J. Investment Pools
   1. Local government investment pools organized under Section 4 of Public Act 121 of 1985, the Local Government Investment Pool Act. Not more than 50% of the City’s total portfolio may be invested in theses pools at any one time.

8. Safekeeping and Custody

All security transactions, including collateral for repurchase agreements entered into by the City shall be conducted on a Delivery-versus-Payment basis to ensure that securities are deposited in an eligible financial institution prior to the release of funds. All securities purchased by the City shall be properly designated as an asset of the City. Securities may be held by a third party custodian designated by the City Treasurer and evidenced by safekeeping receipts. The Treasurer shall initiate Custodian Agreements for the retention of investments by third parties. Withdrawals shall be made by the City Treasurer or Assistant Treasurer.

9. Diversification and Maximum Maturities

The City will diversify its investments by security type and institution. The investments shall be diversified by avoiding over concentration in securities from a specific issuer or business sector. Investments shall have varying maturities. With the exception of U.S. Treasury and Agency securities, authorized pools, and other types of investments listed below, no more than 25**%** of the City's total investment portfolio will be invested in a single security type or held by a single financial Institution. To the extent possible, the City will attempt to match investments with anticipated cash flow requirements. Investment instrument selection shall avoid high credit risks and shall include use of readily available funds such as local government investment pools or mutual funds to maintain sufficient liquidity.

The following is a table of securities and the City's length maturity:

Investment Type	Grade	Maximum % of Total Investments	Length of Investment
US Treasury Obligations	N/A	Up to 100%	1 day to 5 years
Certificates of Deposit	A (Bank)	Up to 50%	1 day to 5 years
Commercial Paper	Top 2 Grades	Up to 25%	1 to 270 days
Certificate of Deposit Account Registry Service (CDARS)	Top 2 Grades	Up to 25%	1 to 270 days
Repurchase Agreements	PA 20	Up to 25%	1 to 90 days
Bankers Acceptances	A (Bank)	Up to 50%	30 to 270 days
Michigan Municipal Obligations	N/A	Up to 25%	1 day to 5 years
Money Market Mutual Funds	PA 20	Up to 25%	No restrictions
Investment Pools	PA 20	Up to 50%	No restrictions
Inter-local Investment Obligations	PA 20	Up to 50%	No restrictions
Local Government Investment Pools	PA 20	Up to 50%	No restrictions

10. Internal Control

The City Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The Treasurer shall maintain a list of investments by fund and financial institution to monitor diversification. The City shall establish an annual process of independent review by the City's external auditor. This review process should provide internal control by assuring compliance with City policies and procedures.

11. Investment Performance

The cash management portfolio will be designed with the objective of regularly meeting or exceeding a selected performance benchmark, which may include the average return on one-year U.S. Treasuries, a bank investment pool, or the average rate of the Fed funds. These are common benchmarks for lower risk investment transactions and therefore establish a minimum standard for the portfolio's rate of return.

12. Statutory Change Clause

1. In the event any state or federal legislation or regulation should change instruments or institutions authorized by this policy, such changes shall be deemed to be immediately incorporated in this policy.

2. This policy replaces and supersedes prior adopted policies on investment of surplus funds under Public Act 20 of 1943 and Public Act 217 of 1982, being section 129.91 of the Michigan Complied Laws.

13. Investment Policy Adoption

This policy was adopted by the resolution of the City Commission of the City of Kalamazoo, at their regular meeting held on _____. This policy shall be reviewed on an annual basis. Any changes or modifications made to this policy must be approved by the City Commission

EFFECTIVE DATE:

____
Signature

____
Title