# Agenda
# Regular Meeting of the City Commission

City of Kalamazoo

**Monday, January 4, 2016 7:00 PM**

**City Commission Chambers - 241 W. South Street**

**A. CALL TO ORDER/ROLL CALL**

**B. OPENING CEREMONY**

1. Invocation: **Reverend John McNaughton**

2. Pledge of Allegiance

3. Introduction of Guests

   a. Presentation on the Final Report from the Blue Ribbon Revenue Panel (Sheri Welsh and Mattie Jordan-Woods)

4. Proclamations

**C. ADOPTION OF FORMAL AGENDA**

**D. COMMUNICATIONS**

1. Calendar of Upcoming Meetings

**E. PUBLIC HEARINGS**

**F. CONSENT AGENDA**

**(Action: Motion to approve Items "1-6" and authorize the City Manager to sign all documents on behalf of the City)**

1. Approval of a change order to the contract between the City of Kalamazoo and Apple Bus Company to provide Metro County Connect Sunday Service beginning on February 7, 2016.

2. Adoption of a RESOLUTION recommending that the Michigan Liquor Control Commission approve a Redevelopment Liquor License for Maru Kalamazoo, LLC at 427 E. Michigan Avenue.

3. Approval of a one-year lease with Kalamazoo County for Bronson Park.

4. Approval of a purchase agreement with Burdick-Crosstown Square, LLC to purchase a portion of City-owned land located at the intersection of Crosstown and Burdick.

5. Authorization for the City Manager to grant a Unilateral Permit to 123.Net, Inc., pursuant to the Metropolitan Extension Telecommunications Right of Way Oversight Act.

6. Approval of the minutes from the City Commission meeting on December 14, 2015.

**G. REGULAR AGENDA**

**H. REPORTS AND LEGISLATION**

1. City Manager's Report
    a. Solid Waste Fund Update

2. Local Officers Compensation Commission Report of Determination

**I. UNFINISHED BUSINESS**

**J. POLICY ITEMS**

**K. NEW BUSINESS**

**L. CITIZEN COMMENTS**

**M. MISCELLANEOUS COMMENTS AND CONCERNS BY COMMISSIONERS**

**N. CLOSED SESSION**

**O. ADJOURNMENT**

## ADDITIONAL INFORMATION

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# Commission Agenda Report
City of Kalamazoo

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

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

**DATE:** 12/30/2015

**SUBJECT:** Final Report from the Blue Ribbon Revenue Panel

**INFORMATIONAL ITEMS**

Attached is the *City of Kalamazoo Blue Ribbon Revenue Panel Report to the City Commission*.

**ATTACHMENTS:**

| Type | Description |
|---|---|
| Report | Blue Ribbon Revenue Panel Final Report |

# City of Kalamazoo
# Blue Ribbon Revenue Panel
# Report to the City Commission

## INTRODUCTION

This document provides the report of the Blue Ribbon Revenue Panel to the Kalamazoo City Commission. It includes the Panel's recommendations for recurring revenue options to address the structural deficit in the City's General Fund.

A summary of the background and context for this report follows.

- When the Kalamazoo City Commission established its priorities for 2014-15, one of the priorities it set was to establish the long-term financial sustainability of the City.
- To implement that priority, the Commission focused on three significant initiatives:
  - Contain retiree health care costs to manage the City's ongoing liability.
  - Implement priority-based budgeting to ensure that the City is using its limited resources to provide the core services that are most important to citizens.
  - Establish a Blue Ribbon Revenue Panel to look at options for generating the revenue the City needs to address the structural imbalance in its General Fund.
- In 2015, the City Commission authorized the City Manager to appoint a 21-member Blue Ribbon Revenue Panel to recommend to the City Commission options for generating recurring revenue to address the structural imbalance in the City's General Fund.
- The list of Panel members is Appendix A of this report and may be accessed by clicking on the following link: *http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5188-appendix-a-blue-ribbon-revenue-panel-membership-list*
- In order to ensure that the Panel had the information required to carry out its work, it was supported by:
  - The accounting firm Plante Moran
  - The W.E. Upjohn Institute for Employment Research
  - Information on the City's finances provided by the City Manager
- The Panel met in a series of public meetings between June and December of 2015.

## PANEL MANDATE AND SCOPE

The Panel's mandate and scope of work are outlined below.

### The Panel's Mandate

Research, study and explore revenue options that, when considered together, will address the structural imbalance of the City's General Fund. The Panel's work will culminate in the issuance of a report to the City Commission that includes recommendations for resolving the structural imbalance both near-term (1 to 5 years) and long-term (beyond 5 years). The Panel should strive to reach consensus in recommending the preferred option/options to the City Commission.

### Scope of the Panel's Work

The Revenue Panel's scope of work to recommend to the City Commission the best revenue options to address the structural imbalance in the General Fund includes:

- Ideas, approaches and suggestions for raising revenue that are within the control of the City
- Revenue in the form of taxes, fees and other General Fund income
- Revenue generating ideas that are not within the City's control that could become long-term considerations – even if they are not near-term solutions. For example, some solutions might require action by:
  - The Michigan legislature
  - Other governmental units within Kalamazoo County

The Panel agreed that it is vitally important to secure feedback from the community prior to making decisions about which revenue options to implement. The Panel was clear, however, that securing that feedback is the responsibility of the City Commission and the City Administration – not the Revenue Panel. The Panel recommends that:

- The City Commission work with the City Administration to determine and implement the most appropriate means for securing citizen input
- This feedback be solicited by providing a complete picture of three factors to improve the City's sustainability:
  - Containing retiree health care costs and other cost reduction efforts, including significant reductions in the size of the City's workforce that eliminated 133 positions between 2010 through 2014
  - Priority-based budgeting
  - Options for increasing recurring revenue to address the structural imbalance in the City's General Fund

## Approach to the Panel's Work

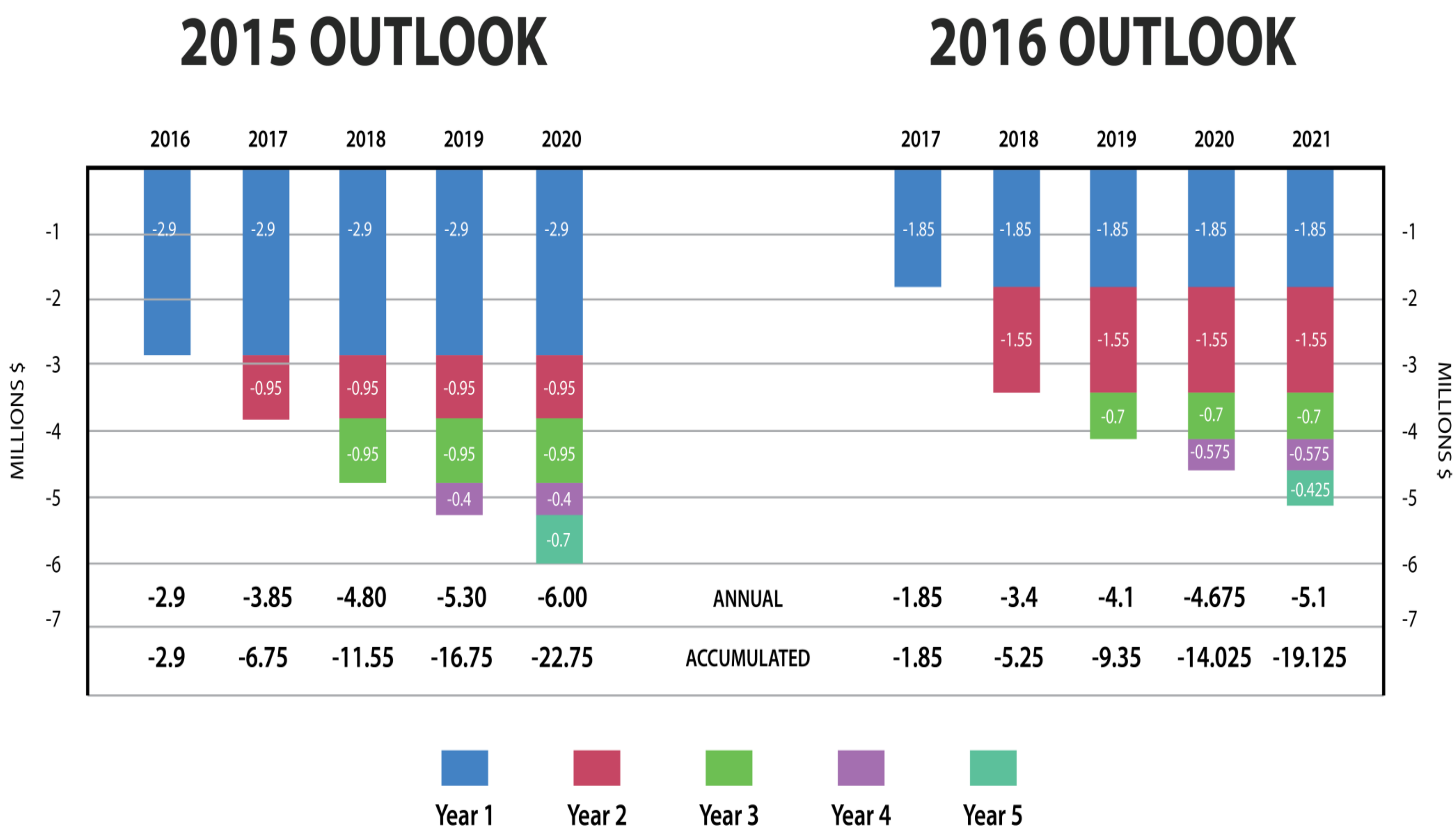
In determining the approach to its work, the Panel analyzed a significant amount of information to define the problem. In addition, it developed an approach to its deliberations that fostered public transparency. Those efforts are outlined below.

### Defining the problem

In developing an understanding of the structural imbalance in the City's General Fund, the Panel analyzed:

- Michigan's municipal finance model and the limited options it allows cities in Michigan to use for enhancing revenue. Appendix B of this report provides a summary of this information and may be accessed by clicking on the following link: *http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5189-appendix-b-michigan-s-municipal-finance-model*
- Significant cost-reduction efforts that the City of Kalamazoo has undertaken in recent years to reduce costs, including reducing the City's workforce by 133 employees between 2010 and 2014 with an annual savings of over $10 million. A summary of this information is in Appendix C of this report and may be accessed by clicking on the following link: *http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5183-appendix-c-city-s-cost-reduction-efforts*
- The significant budget shortfall that the City of Kalamazoo faces over the next four years as a result of the structural imbalance in the City's General Fund. That shortfall is depicted in the chart below and projected to be:

# PROJECTED GENERAL FUND DEFICITS



- The 2015 Outlook in the above chart is the information that was presented to the Panel during its meeting on July 6, 2015.
- The 2016 Outlook represents updated projections that include:
  - Addressing the $2.9 million potential shortfall in 2016 with one-time fixes that balance the budget in 2016 but don't address the structural deficit in the General Fund.
  - Estimates for new State of Michigan road funding
- A total of $19.125 million over the five year period from 2017 through 2021.
- Due to Michigan's restrictions on the rate at which property tax revenue is permitted to grow, the budget shortfall will continue to widen each year beyond the four-year projection summarized above.

This budget shortfall is summarized in Appendix D of this report, which may be accessed by clicking on the following link: *http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5184-appendix-d-city-of-kalamazoo-s-projected-budget-shortfall*

### Public Transparency

In order to assure that the Panel operated with public transparency, it used the following practices in carrying out its work.

- Conducting each meeting as a public meeting
- Providing a written summary of each meeting
- Providing its meeting summaries and all of its working documents to the public using the following website: *http://www.kalamazoocity.org/revenue-panel*

## Identification of Potential Revenue Options

The Panel identified a number of revenue options that may be viable and deserve further consideration by the City Commission and City Administration. All of those options are listed below.

- Capital Millage
- Development Infill
- Headlee Override
- Income Tax Combined with Property Tax Reduction
- Public Act 33
- Special Assessment District – Streets
- Special Assessment District - Parks
- Cell Tower Revenue
- Repurposing an Existing Millage
- Payments in Lieu of Taxes (PILOTS) for Non-profits
- Privatize Parking
- Regionalize Water/Wastewater Services
- Adding New Services for New Revenue (such as a fiber optic network)
- Advertising
- Event Sponsorship
- Mutual Aid Cost Sharing
- Naming Rights
- New Authority for a Service

- New Fees (such as  Business Licenses)
- Pay to Park on the Street
- Sell City Assets to Stimulate Development
- Reallocate Costs for Fees (Permitting, Building, etc.)
- Sale and Use Tax

More information on those options is provided in Appendix E of this report and may be accessed by clicking on the following link:
*http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5185-appendix-e-matrix-of-all-revenue-options*

Because of the magnitude of the structural budget deficit over the next five years, the Panel focused its efforts on analysis of the ten revenue options that:
- Had the best potential to generate significant revenue over the five year period of the Panel's consideration
- Would provide recurring revenue rather than one-time fixes

The list of the ten potential revenue options that were analyzed follows.
- Countywide Emergency Dispatch
- Countywide Law Enforcement Millage
- Regionalize Water/Wastewater Services
- Income Tax Combined with Property Tax Reduction
- Special Assessment District – Streets and Parks
- Development Infill
- Capital Millage
- Public Act 33
- Privatize Parking
- Headlee Override

A summary of the Panel's analysis of each option is provided in Appendix F of this report and may be accessed by clicking on the following link:
*http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5186-appendix-f-matrix-of-ten-potential-revenue-options*

For each of the ten options, the Panel worked with Plante Moran, the Upjohn Institute for Employment Research and the City Administration to summarize its deliberations in a brief fact sheet. Appendix G of this report, Fact Sheets for Ten Potential Revenue Options, may be accessed by clicking on the following link:
*http://www.kalamazoocity.org/docman/city-of-kalamazoo/city-manager/blue-ribbon-revenue-panel/5187-appendix-g-fact-sheets-for-ten-major-revenue-options*

## Evaluation of Revenue Options

Prior to voting on each of the ten potential revenue options individually, the Panel evaluated each revenue option on its individual merits using the following approach.
- Identifying pros and cons for each option
- Evaluating each option based on Guiding Principles in the City of Kalamazoo's Vision for a Sustainable Community

- Evaluating each option based on the Criteria for the Desirability of a Revenue Option provided by The Upjohn Institute for Employment Research

### Identification of Pros and Cons

The results of the identification of pros and cons for the ten potential revenue options are summarized in the fact sheet for each revenue option which is provided in Appendix G.

### Evaluation Based on Guiding Principles

Each Panel member rated each of the ten potential revenue options in terms of its compatibility with the following six pillars of Kalamazoo's vision for a sustainable community.

#### Economic Vitality

- Help grow and maintain a sustainable economy.
- Increase economic opportunities through collaboration.
- Create a vital and vibrant downtown.

#### Neighborhood Development

- Encourage diverse, clean, safe, quality neighborhoods.
- Encourage and provide affordable housing opportunities.
- Build upon neighborhood infrastructure by strengthening quality relationships to improve neighborhoods through community policing.
- Continue quality of life improvements for residents in area neighborhoods.

#### Environmental Stewardship

- Protect and preserve water quality.
- Meet or exceed all standards for effluent discharge.
- Create and maintain a system of open space and greenways.
- Create and maintain a strategy for the implementation of sustainable practices city-wide.

#### Community Building

- Encourage a culture of acceptance and tolerance.
- Continue to work toward the reduction of poverty throughout Kalamazoo.
- Work with community partners to address the homeless issues.

#### Responsible and Responsive Government

- Maintain an open and accessible government.
- Provide quality city services and programs.
- Embrace ethical, integrity-based, quality customer service performance practices.
- Provide prompt, professional safety and emergency services.
- Design and implement a multi-model transportation strategy.

#### Fiscal Stewardship

- Balance city revenue and expenditures.

A summary of the results of Panel members' individual rating of each potential revenue option using the above criteria appears in the table on page 7. A low score reflects higher compatibility with the pillars of Kalamazoo's vision for a sustainable community.

## Evaluation Based on Desirability Criteria

Each Panel member also rated each of the ten potential revenue options based on its desirability using the following criteria provided by The W.E. Upjohn Institute for Employment Research. These criteria are based on the work of Nobel Laureate Economist Joseph Stiglitz.

**Economic Efficiency:** The revenue option should not interfere with the efficient allocation of resources.
**Administrative Simplicity:** The revenue option ought to be easy and relatively inexpensive to administer.
**Flexibility:** The revenue option ought to be able to respond easily to changed economic conditions (such as a recession or a shift in the entity's tax base.)
**Political Responsiveness:** The revenue option should be designed so that individuals can ascertain what they are paying so that the political system can more accurately reflect the preferences of individuals.
**Fairness:** The revenue option ought to be fair in its relative treatment of different individuals.
**Benefits Aligned with Costs:** The revenue option ought to correct situations in which those who benefit from a service are not paying their share of providing the service.

A summary of the results of the Panel members' individual rating of each potential revenue option using the above criteria appears on page 7. A high score reflects revenue options that Panel members rated as more desirable.

## Rank Ordering of Revenue Options

| **Revenue Option** | **Strategic Focus Score** (Low Is Optimal) | **Desirability Score** (High Is Optimal) | **Annual Revenue Potential** | **Five Year Revenue Potential** | **Preliminary Rank** |
|---|---|---|---|---|---|
| Countywide Emergency Dispatch | 9 | 417 | \$1.4M to \$2.0M | \$5.0M to \$8.0M | Tier 1 |
| Countywide Law Enforcement Millage | 11 | 391 | \$3.1M | Depends on Date of Millage Election | Tier 1 |
| Regionalize Water/Sewer Services | 17 | 376 | Dependent on PILOT Payments to be Negotiated | Dependent on PILOT Payments to be Negotiated | Tier 1 |
| | | | | | |
| City Income Tax | 26 | 321 | \$5.6M GF & \$3.1M to \$6.0M New Capital | \$22.4 GF & \$12.4M to \$24.0M New Capital | Tier 2 |
| Special Assessment: Streets and Parks | 30 | 280 | \$200k to \$400k | \$1.0M to \$2.0M | Tier 2 |
| Development Infill | 31 | 363 | \$200k to \$500k | \$800k to \$2.0M | Tier 2 |
| | | | | | |
| Capital Millage | 40 | 259 | \$500k to \$2.5M | \$8.0M | Tier 3 |
| Public Act 33 | 41 | 284 | \$2.0M to \$5.0M | \$8.0M to \$20.0M | Tier 3 |
| Privatize Parking | 45 | 315 | Requires Market Appraisal | Requires Market Appraisal | Tier 3 |
| Headlee Override | 46 | 229 | \$1.0M | \$4.0M | Tier 3 |

## Summary of Panel Recommendations

Using the above evaluations as input, Panel members voted on whether to recommend each of the ten potential revenue options to the City Commission. The results of those votes are summarized below based on which options were recommended and not recommended.

### Recommended Revenue Options

The Panel voted to recommend the following options to the City Commission.

#### Countywide Emergency Dispatch

Tom Huff moved to recommend Countywide Emergency Dispatch to the City Commission. Ron Kitchens seconded it. The motion passed unanimously: 18 support, 0 opposed, 3 absent.

It is estimated that this revenue option could generate approximate $1.4 to $2.0 million annually for the General Fund. Over the five year period from 2016 through 2020, it is estimated to generate $5.0 to $8.0 million for the General Fund.

#### Countywide Law Enforcement Millage

Andrew Haan moved to recommend the Countywide Law Enforcement Millage to the City Commission. Richard Felbinger seconded the motion.
The motion passed unanimously: 18 support, 0 opposed, 3 absent.

It is estimated that this revenue option could generate approximate $3.1 million annually for the General Fund. Because it would require scheduling a special millage election to be implemented within the five-year period from 2016 through 2020, the amount of revenue it would generate during that period of time depends on when it is implemented.

#### Regionalize Water and Wastewater Services

Ron Kitchens moved to recommend regionalizing water and wastewater services to the City Commission. Linda Teeter seconded the motion. The motion carried 17-1 with 3 absent.

The amount this revenue option will generate for the General Fund is dependent on the amount of PILOT payments negotiated with other jurisdictions in the county-wide authority.

#### Development Infill

Andrew Haan made the following motion. As a generator of long-term revenue, the Panel recommends that the City of Kalamazoo develop a strategy to maximize revenue from development infill and establish a municipal property disposition strategy. The motion passed: 19 support, 1 opposed, 1 absent.

While this revenue option has the potential to generate revenue for the General Fund in the long-term, it is not expected to make a significant contribution to the General Fund during the five year period from 2016 through 2020.

#### Privatize Parking

Tom Huff moved to recommend to the City Commission that – as part of a strategy to generate long-term revenue – the City of Kalamazoo develop a strategy to determine if it's feasible to sell or lease some or all of the parking system with the end result of gaining tax revenue and/or promoting development infill for long-term revenue. The motion was seconded by Jim Escamilla. The motion passed: 17 support, 2 opposed, 1 abstention and 1 absent.

Further work is required to determine the revenue potential of this option through sale or lease of some or all of the parking system or using parking lots to stimulate development infill.

### Revenue Options Not Recommended

Panel members voted not to recommend the following revenue options to the City Commission.

#### City Income Tax combined with Property Tax Rollback

Patti Owens moved not to recommend establishing an income tax with the required rollback in the property tax. Carl Brown seconded the motion. The motion not to recommend passed: 15 support, 5 opposed, 1 absent.

#### Special Assessment for Streets and Parks

Tom Huff moved not to recommend Special Assessments for Streets and Parks to the City Commission. The motion was seconded by Matt Milcarek. The motion not to recommend passed: 19 support, 1 opposed, 1 absent.

#### Capital Millage

A motion not to recommend a capital millage to the City Commission was made by Matt Milcarek and seconded by Chris Praedel. The motion not to recommend was passed: 14 support, 5 opposed, 1 abstention and 1 absent.

#### Expanding Public Act 33 to Include Kalamazoo

A motion not to recommend including Kalamazoo in Public Act 33 was made by Matt Milcarek and seconded by Patti Owens. The motion not to recommend passed: 18 support, 2 opposed, 1 absent.

#### Headlee Override

A motion not to recommend a Headlee Override to the Kalamazoo City Commission was made by Matt Milcarek and seconded by Chris Praedel. The motion passed: 14 support, 5 opposed, 1 abstention and 1 absent.

### Other Panel Recommendation on Legislative Advocacy

Kip Miller made a motion that the Revenue Panel recommend to the City Commission that the City Administration prepare a brief report detailing the challenges of the current municipal financing model in Michigan and recommending that the Michigan legislature increase local empowerment and flexibility in addressing those challenges. Patti Owens seconded the motion. It passed unanimously, 17-0 with 4 panel members absent.

## Conclusion

Based on the above decisions, a summary of the Panel recommendations for addressing the structural imbalance in the City's General Fund follows.

| Revenue Options | Estimated Annual Revenue | Estimated Revenue 2016-2020 |
| --- | --- | --- |
| Countywide Emergency Dispatch | $1.4 – $2.0 million | $5.6 – $8.0 million |
| Countywide Law Enforcement Millage | $3.1 million | Depends on the date of the millage election |
| Development Infill | $200,000 to $500,000 | $800,000 to $2 million |
| Countywide Water and Wastewater Authority | Depended on PILOT payments to be negotiated | Depended on PILOT payments to be negotiated |
| Sell or Lease Some/All of Parking System | Requires a market appraisal | Requires a market appraisal |

In carrying out its work, members of the Revenue Panel had substantive disagreements on which revenue options to recommend and the reasons for their viewpoints and decisions. Throughout the Panel's deliberations, however, members had substantive agreement agreed on the following points.

- It's critical to ensure the long-term vitality of the City of Kalamazoo.
- The City of Kalamazoo's financial stewardship includes:
  - Providing essential, citizen-preferred services
  - Effectively managing operating costs and long-term liabilities
  - Pursuing appropriate revenue enhancements without overburdening citizens, particularly those that are most economically vulnerable.
- The City of Kalamazoo should pursue multi-jurisdictional governmental cooperation where feasible to increase both the effectiveness and efficiency of delivering needed services.
- The City Commission and City Administration should take appropriate action with Kalamazoo's representatives to State Legislature in order to recommend specific ways to improve the structure of municipal finances in Michigan.

Based on the Panel's extensive work, members are well aware of the significant challenges that the City of Kalamazoo faces and will continue to face as a result of the structural imbalance in the City's General Fund. It is hoped that the Panel's recommendations provide guidance to the Kalamazoo City Commission determines the best possible strategies for addressing the City's financial challenges.

## Comments from Panel Members

This section provides a summary of comments by Panel members either made during the Panel's meetings on November 16 and December 7 or provided by email after those meetings.

### Comment on the Municipal Finance Model

Andrew Haan

In the press release at the outset of this process, the "antiquated municipal finance model that is broken" was cited as one of the reasons Kalamazoo was faced with the crisis we have been tasked to provide strategies to resolve. In having chosen to characterize the problem through that lens, it seems to me that we are obligated as a

Panel to articulate how we think the system could be fixed. Though it may be unlikely to generate any major changes in the near-term, I think that if the Panel does not make some recommendations on how to help communities avoid finding themselves in a similar situation, we are missing a major opportunity to add Kalamazoo's collective voice to the chorus already underway.

### Comment on the Panel's Mandate and Recommendations

MATT MILCAREK

The Panel was originally tasked with generating a report "that includes recommendations for resolving the structural imbalance in the General Fund both near-term (1 to 5 years) and long-term (beyond 5 years)." The process for this decision making was originally to include "community meetings to secure feedback" and work on solutions that were "in-scope". In-scope ideas included those which were within the control of the City, such as revenues from taxes and fees. The Panel also had the liberty to look at "other considerations", such as revenue generating ideas that would require outside participation or action from different municipalities or the State legislature. These items, not fully within the control of City, are where regional solutions were found, and ultimately, where the majority of the Panel's recommendations reside.

The Panel was wise to promote regional solutions, as these are where the most efficiency and tax equity can be found. Unfortunately, these solutions take time to implement, and increased revenues primarily fall in the "long-term" category of recommendation. With that said, it must be addressed that the Panel failed to accomplish one of its original mandates: to offer a recommendation to resolve the structural imbalance in the near-term.

The items with ongoing near-term revenue returns reviewed by the Panel all involved some level of sacrifice on the part of area residents, each with its own pros and cons. With the Panel opting out of public engagement in their evaluation, the process of vetting these options was limited. It must be noted that, as the panel voted on which options to recommend, there was virtually no discussion on which near-term options would be preferable to others. There was merely an up-or-down vote on the individual options – with a number of options having several Panel members voting against not recommending them. Based upon these votes, the lack of public input, and the lack of Panel discussion on the topic, it can easily be concluded that there is no Panel consensus on what the best near-term revenue options are. As a result, the City is left with the data compiled and analyzed by the Panel, City Staff, and the consultants from The W.E. Upjohn Institute for Employment Research and Plante Moran. These near-term revenue options primarily fall into one of two main categories: those which only increase property taxes within the City (a tax increase for all Citizens), and those which drastically change the taxation dynamic in the City by implementing an income tax (where some Citizens will have an overall larger tax burden, while others would see an overall smaller tax burden). Furthermore, the option to lower property taxes and implement a City income tax was the only option that showed flexibility to limit the impact of the change on those with less financial means in our community.

The regional solutions recommended by the Panel are smart moves towards regional health. However, for the City to lead those efforts under the mandate of a regional tax for City revenue savings, the political hurdles will be many. When regional solutions are viewed as the "fix" for City problems, many non-City residents are reasonably skeptical of the benefit to their tax base. Promoting regional efficiency will be much easier if the City of Kalamazoo first solves its structural imbalance. Not only will the regional narrative be more palatable with the City stabilized, the time needed to craft these changes in a true collaborative nature will be there.

Finally, the recommendations from the Panel should be viewed for what they are: a compilation of individual recommendations. They should not be viewed as a "package" of options that are designed to be cohesive with each other. At the time the Panel voted on their recommendations, virtually no discussion was had regarding how these recommendations did or did not work together. There was merely an up-or-down vote on the individual options.

### Comment on Expense Reductions and Limited Viable Revenue Options

THOMAS T. HUFF

In my opinion, revenue enhancement should include expense reduction: "a penny saved is a penny earned". At our first meeting, we were informed that expense reduction was not to be considered. This left the Committee with an assortment of revenue options, most of which were academic and out of the city's control, i.e:

- Non Profits: 52% of the tax base is owned by non-profit organizations which don't pay any property tax. The largest tax exempt organizations are the educational and medical institutions. This means the remaining 48% have to pay 100% of the taxes to keep the city going. The City Attorney has provided the Committee with a legal opinion stating that the property owned by Western Michigan University would be exempt from property tax even though some of these properties are used in quasi non-academic activities such as housing, parking, athletic club and food related activities. The City does collect approximately $2 million in voluntary PILOT contributions.

- Inter-governmental cooperation: There are 29 governmental entities consisting of cities, villages, townships and unincorporated communities located in Kalamazoo County all of which are trying to provide basic services to our taxpayers. As such, there is an incredible duplication of these basic services. To achieve any savings, the City would have to convince the surrounding governmental entities to share in its expenses - which is not a feasible option.

- Sales Tax: The State Constitution prohibits the City from adopting a sales tax.

- Sale of City Assets: The City has already sold one of its golf courses. The City owns the parking ramps and surface lots and could sell these assets realizing a one-time source of income. In addition, any property sold to the private sector would be placed on the tax roll and generate property tax income in the future.

After considering these options, as well as others, the Committee focused on the income tax option. Many of us felt that the "Blue Ribbon Committee" was established to discuss and support the income tax option. The Committee received financial information and projections from Plante & Moran as well as information from the Upjohn Institute. We noticed that a majority of other cities which had adopted an income tax were either bankrupt or in worse shape than the City of Kalamazoo. We were informed that no city had adopted an income tax for the past 30 years. We noticed that the income tax would negatively impact the residential rental market which is the fastest, most promising growth area in the City. We were informed by the President of

Southwest Michigan First that the adoption of an income tax would or could result in the migration of City taxpayers to the suburbs thereby negatively impacting property values. After considering this information, a majority of the committee members, including myself, recommended against the adoption of an income tax at this time.

The City collects approximately $31 million in annual property taxes and pays the Dept. of Public Safety $32 million. Following the 2008 recession, the private sector had to reduce expenses and redesign its business model in order to remain in business. The Dept. of Public Safety, as well as every other department in the City, will have to do the same. It will no longer be feasible for the taxpayers of Kalamazoo to support paying out pensions at the rate of 70% of salary at the age of 55 with 20 years of service. We are in a time when technology is rapidly changing and improving many of our old ways of doing business. As in the private sector, it would seem to me that the City could find appropriate expense reduction through priority based budgeting to cover the projected revenue shortfall.

In my opinion, the adoption of a city-wide income tax is the last viable option. The City is presently experiencing an increase in urban development which will add to the property base. This increased development infill, together with inflation, will increase property tax revenue. I would hate to see the City make a premature mistake by adopting an income tax at this time.

## Comment on City Income Tax and Property Tax Reduction

MATTIE JORDAN-WOODS

By establishing an income tax, those who benefit from the City's services are required to help pay for those services. Without it, the City isn't viable enough to continue to provide those services. None of the other options fix the deficit. It's the right thing to do – not a last resort.

It's the job of the City Commission to make the case for this new tax.

SHARI WELSH AND MATT MILCAREK

In the event that the Panel recommendations either prove financially insufficient or politically infeasible in the near-term, the City must consider other revenue generating options in order to ensure a vibrant and sustainable finance model. Among those options within the City's control, the implementation of a City income tax in combination with property tax reduction is a viable alternative that must be considered.

The implementation of an income tax in combination with a property tax reduction would drastically alter the percentage of City general fund revenues obtained from property tax options, and thus limit the City's exposure to the constraints placed by the Headlee Amendment and Proposal A. Shifting some of the revenue stream from property taxes to an income tax would subject the City to fluctuations in revenue based on the employment market and would not completely isolate the City from the effects of economic downturns. However, income tax revenue would increase naturally as the economy improves, without any restrictions. We acknowledge that the City has no ability to completely control or eliminate the effects of an economic downturn on City revenues. However the transition to a mixed-revenue model that relies on a conservative blend of both property and income taxes could drastically improve the City's ability to rapidly recover revenue lost during hard economic times.

Another advantage of implementing an income tax in combination with a property tax reduction is that it allows for more flexibility in taxation – both for the City and for individuals. Property taxes are relatively static, unaffected by a property owner's income or means. These taxes are either paid directly by property owners (homeowners) or indirectly by renters as a pass-thru in their rental rates. One's income and family size have no direct impact on their property tax contributions in the City. Shifting a portion of the City's revenue stream to a tax connected to income would allow individual residents to see real tax relief during hard economic times, and provide additional relief through exemptions as their family grows. Additionally, the income tax option would allow significant flexibility in the establishment of exemption limits. The City would have the ability to set those exemptions at a higher level, helping to mitigate the effect of the tax on the poor by allowing larger personal exemptions. Setting higher exemption levels could be a cost savings to all residents, and it could limit the impact of the income tax on low income renters who might not see any tax relief benefit from lowered property taxes. Given the large percentage of low income rental properties and low income residents in Kalamazoo, the City should consider a higher personal exemption level when considering the income tax option as this would mitigate the negative impact of the tax on these residents.

Recent data shows that 81% of the workforce employed within the City of Kalamazoo resides outside of the City limits. The City is host to some of the largest tax exempt economic drivers within our metropolitan area, including WMU, KVCC, K-College, Kalamazoo County Government, Bronson, Kalamazoo Public Schools, and the City government. These institutions, and many others that serve the community, are great economic assets to our City. Unfortunately, much of the regional growth seen as a result of these economic drivers, and the tax revenue that has accompanied that growth, has been realized outside the City limits. An income tax is a tool that could help bring in equitable revenue from the thousands of City service users that enjoy our community on a daily basis.

The corresponding property tax reduction (required by the City's Charter at the implementation of an income tax) would, for the first time in decades, align property tax rates in the City with those of surrounding Cities and townships. It is feasible that the City of Kalamazoo could have lower overall property taxes than some of our neighboring municipalities.

It is vital to note that the implementation of an income tax in combination with a property tax reduction of a minimum of 28% (19.5 down to a minimum of 14 as required by the City Charter) would be the first of its kind within the state of Michigan. While there are 22 Cities in Michigan that have adopted income taxes, none of them implemented their income tax in combination with a substantial property tax reduction. The vast majority of these cities also implemented this tax in the 1960s and 1970s, years before both the Headlee Amendment and Proposal A were voted into law. The remaining cities implemented the income tax in the late 1980s and early 1990s, all before Proposal A was voted into law. None of these income taxes were implemented in an effort to diversify tax revenues as a result of the constraints put in place by the Headlee Amendment and Proposal A. The impact of the limitations of the Headlee Amendment and Proposal was not fully realized in the City of Kalamazoo until the housing crash of 2008.

Because of the unique nature of what Kalamazoo could potentially do with the adoption of the income tax/property tax rollback option, there are no examples within Michigan to look to in regards to unintended negative consequences this change could bring. Doomsday economic impact arguments have not been supported by sound, relevant 21st century data. Michigan cities adopting income taxes by and large did so at a time when jobs and families were fleeing urban cores in favor or the suburbs. Trends of economic strife within these core cities would have existed regardless of their taxation policies, in connection with state and national trends at the time. Additionally, much of the economic decline in these cities is attributed to the loss of manufacturing and automotive industry jobs, all which would have impacted these communities regardless of their municipal tax structure. Some argue that large businesses will flee the City in the wake of an income tax. Existing property tax disparities have already placed many large businesses in the community outside of our City limits. Kalamazoo is well known for its anchor non-profit institutions, all of whom are well entrenched in our City and generally non-mobile. While we must acknowledge that there may be shifts in small and mid-sized for-profit businesses, these shifts must be evaluated in comparison to the alternative of higher property taxes. A City with growing property taxes will see outbound migration. Businesses will locate where there is demand and a culture that supports them, and the City of Kalamazoo has a good track record in this area.

Should Kalamazoo implement an income tax in combination with a property tax reduction, it would be doing so at a time in which national and state trends show more and more people moving back into core cities, accompanied by a demand for downtown housing in the City of Kalamazoo at its highest level in decades.

It is noted that the income tax combined with the corresponding property tax reduction would actually result in a net savings for some residents and businesses. The level of savings, and number of residents who might be better off under such a plan would depend on the level of property tax reduction, combined with the income tax level set and the amount of personal exemption allowed.

## Comment on a City Income Tax and Payments in Lieu of Taxes (PILOTS)

DEBORAH GANG

While some of the members joined the Blue Ribbon Panel knowing they would vote against a city income tax, others of us approached this question with an open mind and undecided point of view. Several things took place that deterred me from recommending the tax at this time:

I felt that city administrators put too much influence on the guiding principle criteria (for evaluating revenue sources) "the revenue option ought to be easy and relatively inexpensive to administer". I would think that any revenue options that met that criteria would have already been explored by the city. A city tax certainly meets that standard (if the voters approve it), but it seemed that the relative simplicity and the ability to garner all needed revenue by a new tax weighed too heavily throughout our meetings.

In addition, I was too often reminded of the movie, "The Wild Ones", in which James Dean is asked what he's rebelling against, and he answers, "What have you got?" The tax was always discussed as being implemented at its maximum level of 1% and .5%, with basically no consideration of the possibility of achieving a package of options which could allow the tax to be implemented at a lower rate. This would require creativity and shared pain, but it would possibly allay the fears of the tax payers that the answer to the question: "How much money do you need?" is always, "What have you got?"

There was no convincing discussion of the regressive nature of the new tax or of the larger issue of the unfair and regressive Michigan income tax that it mimics. While restructuring the State income tax would be difficult, it would not be impossible. Or, if it would be impossible to make the State tax more fair, do we really want to layer another similar tax on top of it? In addition, a city income tax follows the outdated formula for how the State taxes retirement income (a method which was unfair to people who didn't retire from public service or major corporations, and which Governor Snyder reformed after taking office). This is perhaps a small point, but it causes me concern that perhaps the city tax provisions have not been modernized in other areas too.

I know from speaking with several panel members that a number of us are regularly approached by people asking why aren't we discussing PILOTS (though they don't always know the acronym) or "I thought you were discussing PILOTS and then why did that get dropped?" Some of these citizens are people that work for non-profits and attend church but who nevertheless want to discuss how churches and other non-profits could be offered the opportunity to be part of the solution. I don't enjoy having to tell questioners that the facilitator took the topic off the discussion list after only cursory and oddly uniformly negative fact finding by the city.

I wonder how the voters would react to being asked to approve a city tax if we could tell them that many non-profits have pledged to contribute PILOTS, and if these voters knew the city was also pledging to enact the tax at a lower rate such as .5% and .25%—and that there are two or three other reforms/consolidations/rule changes on the way to complete the package?

### Comments on Development Infill

MATTIE JORDAN-WOODS

When developers receive tax abatements, they should be held accountable for fulfilling the agreements they made to secure the tax abatement. One way to assure compliance would be to require an escrow account.

ANDREW HAAN

With infill development emerging with near universal support as a long-term strategy to grow the economy of the city, it seems that the report should speak strongly to the need for a comprehensive, coordinated strategy to catalyze and sustain this effort, and that work on that strategy begin immediately.

### Comment on the Possible Sale of City Assets

MATTIE JORDAN-WOODS

The City should not sell any of its assets. But, if it does sell them, the deed should be restricted so that they can't be sold to non-profits and come off the tax rolls.

### Comment on Expected Revenue

MATT MILCAREK

With the recommendations from the panel now known, it would be very beneficial to have a realistic timeline for the expected "revenue" from those options based on actual data and/or past experiences in the region, not just Panel members' opinions. For example, if an option is likely to take several years to set up and approve, what is that timeline, and when does the revenue actually hit? As we've seen with consolidated dispatch, sometimes you still don't know when (or even if) the revenue will hit even after you've pulled the trigger on moving to a regional model. It would also be beneficial to list all of the "outside" entities that will be required to implement these changes.

### Comment on Governmental Partnerships

ANDREW HAAN

Likewise with the issue of partnership with neighboring units of government; this panel has an opportunity to set the tone for future, substantive collaboration. I would like to see the panel recommend that the administration or elected leadership of the city convene a regionally-based group to study how best the local units of government can collaborate to provide better aligned, more affordable services to their residents.

### Comment on Non-Profits Paying Taxes

MATTIE JORDAN-WOODS

When we are talking about non-profits not paying taxes, we need to clarify that some non-profits pay taxes.

### Comment on Last Minute Information

MATT MILCAREK

The Panel was presented with an outside "sheet" of questionable scientific relevance at the exact moment of voting on the income tax. To be clear, it is not my intent to call any member of the Panel out, but to have an honest disclaimer for the public. The Panel and its work has been highly commendable for its transparency up to this point – with all of the information members have seen being available to the public. However, at a critical moment in our work, members were given a sheet with a clear bias that was not vetted (and likely wouldn't have passed vetting) by City Staff or the Panel's consultants.

I'm not particularly a fan of showing this sheet to the public, particularly if it is as inaccurate as I have been led to believe. It's like asking a jury to "un-see" something; it never really works. However, we'd be doing a disservice to the Panel and the public to fail to mention what happened, particularly given that no other items up for consideration had "information" presented to the Panel in this fashion, at the time of voting or at any other time.

I recommend a notation that simply states members were presented with a "member presented" data sheet on the income tax at the time of voting, and have an "opinion" from The W.E. Upjohn Institute or Plante Moran on the accuracy of the data and its conclusions.

## LIST OF APPENDICES

# Commission Agenda Report
City of Kalamazoo

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

**FROM:** Scott A. Borling, City Clerk

**PREPARED BY:** Shelby Moss, Deputy City Clerk

**DATE:** 12/29/2015

**SUBJECT:** Calendar of Upcoming Meetings

**INFORMATIONAL ITEMS**

Attached is the calendar of upcoming board, commission, and committee meetings for the period January 5th through January 19th.

**ATTACHMENTS:**

| Type | Description |
|---|---|
| Meeting Schedule | Calendar of Meetings for 1/5 - 1/19 |

# Calendar of Upcoming Meetings

City of Kalamazoo

## City Commission (next 30 days)

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

January 19th and February 1st

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

No January Neighborhood Meeting

***Special Meeting***

A special meeting of the Kalamazoo City Commission will be held on Monday, January 11, 2016 at 6:00 p.m. in the Community Room at City Hall. The purpose of the special meeting will be to review the City's Proposed FY2016 Budget.

## Advisory Boards, Commissions and Committees (next two weeks)

The **Parks and Recreation Advisory Board** will meet on Tuesday, January 5, 2016 at 5:20 p.m., in the Parks and Recreation Community Room at Mayors' Riverfront Park, located at 251 Mills Street.

The **Planning Commission** will meet on Thursday, December 7, 2016 at 7:00 p.m., in the City Commission Chambers at City Hall.

The **Kalamazoo Historic Preservation Commission** will meet on Tuesday, January 12, 2016 at 7:00 p.m., in the Community Room at City Hall.

The **Friends of Recreation Board** will meet on Thursday, January 14, 2016 at 8:15 a.m., in the Parks and Recreation Community Room at Mayors' Riverfront Park, located at 251 Mills Street.

The **Traffic Board** will meet on Thursday, January 14, 2016 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, January 14, 2016 at 6:30 p.m., in the Community Room at City Hall.

The **Zoning Board of Appeals** will meet on Thursday, January 14, 2016 at 7:00 p.m., in the City Commission Chambers at City Hall.

The **Downtown Development Authority** will meet on Monday, January 18, 2016 at 3:00 p.m., in the Community Room at City Hall.

The **Kalamazoo Historic District Commission** will meet on Tuesday, January 19, 2016 at 5:00 p.m., in the Community Room at City Hall.

# Commission Agenda Report

City of Kalamazoo

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

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

**REVIEWED BY:** Sean McBride, Executive Director

**PREPARED BY:** Richard Congdon, MCC Coordinator

**DATE:** 12/22/2015

**SUBJECT:** Metro County Connect Sunday Service

**RECOMMENDATION**

It is recommended that the City Commission approve a change order for the Metro County Connect contract between the City of Kalamazoo and the Apple Bus Company to provide Metro County Connect Sunday Service beginning on February 7, 2016.

**BACKGROUND**

In past Metro County Connect passenger surveys the number one additional service that passengers would like to have is Sunday service. In the last survey conducted in April of 2015, 20% of respondents mentioned Sunday service specifically so that they could travel to church, visit friends and relatives or go on shopping trips. Many passengers are unable to travel when Metro County Connect service is not available.

When the Metro County Connect contract was put out to bid in 2014, there was a provision included for the addition of Sunday service for the contractor to provide if implemented in the future. Since there was no statistical information for Sundays, the contractor bid on a cost per trip basis instead of a set price based on trips, miles and hours that Monday through Saturday service was bid. With the passage of the transit millage on August 4, 2015, Metro Transit plans on extending Sunday service to the fixed-route buses when the millage goes into effect in the fall of 2016. Metro County Connect Sunday service will precede that and begin on Sunday, February 7, 2015.

<u>Marketing</u>

Sunday service will be promoted to all Metro County Connect passengers prior to the February 7$^{th}$ beginning of service in several ways:

- Postcards will be mailed to Metro County Connect passengers promoting Sunday service with the hours, scheduling details and start date.
- A letter will be sent to area agencies that serve Metro County Connect passengers promoting the service.
- Posters will be placed on all Metro County Connect vehicles promoting Sunday service. Posters will also be placed at area agencies such as the dialysis units, Disability Network, MRC, KCMHS, etc. with the details of Sunday service.
- A news release will be sent to the media.

- The Metro Transit website and social media accounts will promote the service.

**COMMUNITY RESOURCES CONSULTED**

The expansion to Sunday Service for Metro County Connect commencing in February 2016 has been endorsed by the Kalamazoo County Transportation Authority. Community support for this expansion has been expressed through rider surveys, community meetings and through meetings of the three transit authorities.

**FISCAL IMPACT**

Estimated Costs

The Metro County Connect contractor, Apple Bus Company, bid Sunday service at a cost of $36.22 per trip for the 2016 contract year. Metro County Connect will provide Sunday service from 8:00 am until 5:00 pm, the same as the anticipated hours of service the fixed-route service will provide as required by the Americans with Disabilities Act.

In order to estimate the cost and amount of Sunday service for 2016, Saturday statistics will be used because less passengers travel on Saturday and many employers, agencies and medical offices are closed on Saturday and will reflect Sunday service more than weekday service. Six Saturdays throughout 2015 were randomly picked and the trips broken down between 8:00 am and 5:00 pm. There was an average of 92 trips taken during this time with an average of 21% taken by passengers going for dialysis treatment. The dialysis units are all closed on Sunday so those trips were removed for an average of 73 trips taken on Saturdays from 8:00 am to 5:00 pm. Here are the Saturday statistics that are the basis for estimating Sunday service from February through December 2016:

- Average Saturday trips: 73
- Average monthly Saturday trips: 299
- Average yearly Saturday trips: 3,285
- Sunday service at a cost of $36.22/per trip:
- Estimated monthly cost: $10,829.78
- Estimated cost for 2/7/15 – 9/30/15: $86,638.24
- Estimated cost for 10/1/15 – 12/31/15: $32,489.34
- Estimated total cost - $119,127.58
- Cost of Metro County Connect 2016 contract: $3,152,340.00
- Estimated total cost of Metro County Connect 2016 contract with Sunday service: $3,271,467.58

Metro Transit will begin the second year of a three-year contract with Apple Bus Company on January 1, 2016. The addition of Metro County Connect Sunday service will be funded as part of the Metro Transit budget through fare revenue, Federal Transportation Administration funding, Michigan Department of Transportation funding and the Central County Transportation Authority millage.

# Commission Agenda Report
City of Kalamazoo

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

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

**REVIEWED BY:** Jeff Hadley, Public Safety Chief

**PREPARED BY:** Detective Brett Pittelkow

**DATE:** 12/30/2015

**SUBJECT:** Resolution for a new Redevelopment Liquor License to be located at 427 E. Michigan Ave. in the City of Kalamazoo

**RECOMMENDATION**

It is recommended that the City Commission adopt a RESOLUTION from the Michigan Department of Licensing and Regulatory Affairs, Liquor Control Commission (MLCC) to allow Maru Kalamazoo LLC to open a new restaurant with a new Redevelopment liquor license.

**BACKGROUND**

The approval of this resolution would allow Maru Kalamazoo LLC to open a new restaurant that could sell any type of alcohol for consumption on site only.

The business is going to be called Maru Sushi and Grill. The business is owned by Robert M. Song. The new business will be a full service restaurant that will be open seven days a week. Mr. Song owns restaurants in Okemos, Grand Rapids, East Lansing and Midland Michigan. All of these restaurants have Class C Liquor Licenses also.

Mr. Song plans on remodeling that address with a total investment of over $500,000 dollars. The new restaurant will be 3500 square feet in size and will seat about 90 people. Mr. Song will be leasing the property from GTW Depot (Plazacorp) and at this time entered into a ten year lease. The new restaurant will employ 20 temporary employees along with 8 full time employees. The actual business plans to open in 2016 as soon as the remodeling is done.

A redevelopment liquor license allows the new business the same privileges that a Class C Liquor license has. The redevelopment license was designed to allow cities to have additional liquor license up and above the quota that is normally set by the Michigan Liquor Control Commission. This redevelopment is used when the new applicant has demonstrated to the local city they are not able to buy a Class C license on the open market because the quota system or the lack of available licenses.

Robert Song is aware he must pass inspections from the Building Inspector's office and the Fire Marshal before the business can be opened.

The approval of this resolution before the actual remodeling is done allows the new business owners to work with the Michigan Liquor Control Commission and have the liquor license ready to use once final inspection has been done.

This Detective spoke with Robert Song about possible problems that businesses have that serve alcohol. Robert Song stated that all employees will be trained to watch for alcohol related problems.

**COMMUNITY RESOURCES CONSULTED**

The City of Kalamazoo Downtown Development Authority held a public hearing on Maru Kalamazoo LLC Downtown Redevelopment Liquor License at its regular meeting held on November 16 2015. Copies of the minutes of that meeting are publicly available and reflect a unanimous approval of this liquor license.

**ATTACHMENTS:**

| | Type | Description |
|---|---|---|
| 🗋 | Resolution | Liquor License Local Approval Resolution |

Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll Free: 1-866-813-0011 • www.michigan.gov/lcc

Business ID: ____________
Request ID: ____________
(For MLCC use only)

## Local Government Approval
(Authorized by MCL 436.1501)

**Instructions for Applicants:**

- You must obtain a recommendation from the local legislative body for a new on-premises license application, certain types of license classification transfers, and/or a new banquet facility permit.

**Instructions for Local Legislative Body:**

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a regular (regular or special) meeting of the Kalamazoo City Commission (township, city, village) council/board called to order by ____________ on Jan 4, 2016 (date) at 7:00 p.m. (time) the following resolution was offered:

Moved by ____________ and supported by ____________

that the application from Maru Kalamazoo, LLC (name of applicant)

for the following license(s): New Class C License issued under MCL 436.1521a(1)(b) (list specific licenses requested)

to be located at: 427 East Michigan Avenue, Kalamazoo, MI 49007

and the following permit, if applied for:

☐ Banquet Facility Permit  Address of Banquet Facility: ____________

It is the consensus of this body that it recommends (recommends/does not recommend) this application be considered for approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are ____________

**Vote**

Yeas: ______
Nays: ______
Absent: ______

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the city (township, city, village) council/board at a regular (regular or special) meeting held on Jan 4, 2016 (date)

Scott A. Borling

| Print Name of Clerk | Signature of Clerk | Date |
|---|---|---|

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:
Michigan Liquor Control Commission
Mailing address: P.O. Box 30005, Lansing, MI 48909
Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933
Fax to: 517-763-0059


LARA is an equal opportunity employer/program.Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

# Commission Agenda Report
City of Kalamazoo

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

**FROM:** Clyde J. Robinson, City Attorney

**DATE:** 12/21/2015

**SUBJECT:** Bronson Park Lease

**RECOMMENDATION**

It is recommended that the City Commission authorize the City Manager to execute another one-year lease with Kalamazoo County for Bronson Park.

**BACKGROUND**

The City of Kalamazoo has leased Bronson Park from the County since 1855. Although the City maintains the Park, it does not own the park. The City has proposed acquiring the Park from the County in an effort to demonstrate control over the property as part of developing a Master Plan for the Park, so as to solicit donations to repair the Ianelli Fountain, and to eliminate confusion on the part of many citizens as to which governmental entity has jurisdiction over the Park.

The proposed Lease is for one year, from January 5, 2016, and extends the terms and conditions of the one-year Lease Agreement first entered into by the County and City two years ago and then renewed for one year after a 50-year lease agreement between the two governmental entities expired. It is anticipated that the City and County over the next year may be able to finalize the conditions so as to permit the City to acquire title to Bronson Park. The proposed Lease maintains the status quo of the past 52 years for an additional 12 months.

**COMMUNITY RESOURCES CONSULTED**

The Kalamazoo County Board of Commissioners at its December 15, 2015 meeting approved an additional one-year lease of Bronson Park to the City.

**FISCAL IMPACT**

None. The continued maintenance of Bronson Park on the part of the City is in the 2016 budget presented to the City Commission.

**ALTERNATIVES**

If the City does not approve the proposed Lease, the City becomes a holdover tenant, without the benefit of a lease document. This situation would create uncertainty for those organizations which have requested and received permission from the City for the use of the Park for special events in 2016.

**ATTACHMENTS:**

| Type | Description |
| --- | --- |
| Lease | Bronson Park Lease |

# LEASE OF BRONSON PARK

This Lease is made this 15th day of December, 2015, by and between the COUNTY OF KALAMAZOO, a body corporate of the State of Michigan, and the CITY OF KALAMAZOO, a municipal corporation of the State of Michigan, pursuant to MCL 46.11.

WITNESSETH:

1. For one dollar ($1.00) and other good and valuable consideration, the County does hereby let and lease to said City for a period of one year from and after January 5, 2016, the parcel of land hereinafter described and commonly known as "Bronson park" located in said City and described as follows:

> "A parcel of land bounded on the north by Academy Street, on the east by Rose Street, on the south by South Street, and on the west by Park Street, formerly known and described in the records of the Village and City of Kalamazoo as: "Jail Square" and Academy Square" together with that portion of Church Street duly vacated by recorded instrument of August 1, 1847, Liber M. page 182, register of Deeds records, Kalamazoo County, Michigan."

Said premises to be kept and maintained as a park, free and accessible to all of the inhabitants of said County during said term and for no other purpose.

2. The City, by recording this Lease, agrees to accept said premises subject to the above stated conditions; agrees that it will not assign or sub-let this lease to any other person, firm, or corporation (permits for temporary pubic, civic, social or other events excepted); and agrees that it will maintain and administer said park in substantially the manner which has been practiced heretofore.

3. If the City shall fail materially to comply with the above conditions or shall use said premises for purposes other than those herein allowed, then this lease shall become null and void and said County, by proper proceedings conducted under law, may recover possession thereof and terminate this Lease.

4. The undertakings of the City herein provided are hereby declared to be full ad adequate consideration for this Lease.

COUNTY OF KALAMAZOO

John P. Taylor, Chairperson
Kalamazoo County Board of
Commissioners 12.15.15

Timothy A. Snow 12.15.15
County Clerk/Register

WITNESSES

CITY OF KALAMAZOO

~~Robert~~ Hopewell, Mayor
Bobby J.

WITNESSES

# Commission Agenda Report
City of Kalamazoo

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

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

**REVIEWED BY:** Sue Foune, Public Services Managing Director

**PREPARED BY:** Matt Johnson, P.E. City Engineer

**DATE:** 11/25/2015

**SUBJECT:** Agreement to Purchase City owned property at the intersection of Burdick Street and Crosstown Parkway

## RECOMMENDATION

It is recommended that the City Commission approve a purchase agreement with Burdick-Crosstown Square, LLC for portions of land located at the intersection of Crosstown and Burdick and authorize the City Manager to sign all related documents.

## BACKGROUND

In May of 2015 the Engineering Division of Public Services was contacted by Burdick-Crosstown Square, LLC about the possible sale of the corner of land located at the intersection of Crosstown and Burdick. Burdick-Crosstown Square, LLC would like to expand upon the building currently known as Brite Eyes Brewing for the installation of an outdoor café. Engineering reviewed the request and determined the property could be sold if a sight line easement was granted to ensure proper visibility at the intersection. Burdick-Crosstown Square, LLC agrees to the easement and drafted up a legal description which was reviewed by Engineering, City Attorney's office and City Assessor's office and approved. City Attorney's office drafted a purchase agreement which was reviewed and signed by Burdick-Crosstown Square, LLC.

## COMMUNITY RESOURCES CONSULTED

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

## FISCAL IMPACT

Burdick-Crosstown Square, LLC will purchase the property for fair market value of $2,660. The property at 105 Crosstown, parcel number 06-22-336-003, was added to the City's governmental land assets in 1945 and has a current book value of $912.48.

## ALTERNATIVES

No alternatives have been considered.

## ATTACHMENTS:

| | Type | Description |
|---|---|---|
| 🗋 | Agreement | Purchase Agreement |
| 🗋 | Map | Description |
| 🗋 | Map | Map |

PURCHASE AGREEMENT

This Agreement between, Burdick-Crosstown Square, LLC, a Michigan limited liability company, having an address at, 4429 Grand Prairie Rd, Kalamazoo, MI 49006, and the CITY OF KALAMAZOO, ("City"), a municipal corporation, whose address is 241 West South Street, Kalamazoo, MI 49007, involves the purchase of City owned property by Burdick-Crosstown Square under the following terms and conditions:

1. BACKGROUND. Brite Eyes Brewing Co, LLC is leasing the approximate 3500 square foot building at 1156 South Burdick Street in the City of Kalamazoo - identified as Parcel No. 06-22-236-010 ("Leased Property") - for purposes of operating a brewery, coffee café and restaurant. The Leased Property is owned by Burdick-Crosstown Square, LLC of Grand Prairie Rd, Kalamazoo, MI 49006

The City owns two parcels adjacent to and north of the Leased Property, identified as 101 and 105 West Crosstown Parkway, Parcel Nos., respectively, 06-22-336-002 and 06-22-336-003 ("Property").

Burdick-Crosstown Square desires to purchase the Property and use a portion of 105 West Crosstown for purposes of an outdoor patio and seating area.

2. DESCRIPTION OF THE PROPERTY. The Property, as identified above, is more particularly described and detailed as follows:

*See Attached Exhibit A – Sheet 1 shows the 2 parcels that comprise the Property (noted as 002 & 003) and details the 'Clear Vision Restrictions'; Sheet 2 provides the legal descriptions for the Property and the Clear Vision Restrictions.*

3. CONSIDERATION. Purchaser agrees to purchase the Property from the City for the sum of Two Thousand Sixty Hundred Sixty ($2660.00) ("Purchase Price"), and other good and valuable consideration as set forth in this Agreement. The City agrees to convey the Property by a warranty deed transferring title free and clear of all liens and encumbrances – subject to those exceptions in title policy or defects acceptable to Purchaser, as noted in Paragraphs 4 and 5, respectively – to Purchaser simultaneously upon receipt of the Purchase Price.

4. TITLE INSURANCE. The City shall obtain, at its expense, and provide to Purchaser within 15 days of the Effective Date or this Agreement, a commitment to issue an owner's title insurance policy insuring Purchaser in the amount of the Purchase Price, with the standard printed exceptions and in the latest form approved by the American Land Title Association. The Title Commitment must show good and marketable title to the Property in the City - subject only to easements and restrictions of record that are acceptable to Purchaser in the reasonable exercise of Purchaser's discretion and the satisfaction of the requirements set forth in the Title Commitment - and shall disclose no other easements, restrictions or encumbrances. The City shall

provide any surveys, affidavits and certificates required by the title insurance company if Purchaser elects to have the title policy without exceptions or with additional endorsements. Purchaser is responsible for paying the added premium charged for a policy without exceptions and any such additional endorsements.

City 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.

5. INSPECTION. When Purchaser signs this Agreement, Purchaser and its agents, consultants, and designees ("Purchaser's Agents") may enter the Property during reasonable business hours, and with minimal interruption of pedestrian and vehicular use of the adjacent sidewalks or streets, to perform the inspections referenced in this Agreement. Promptly upon City's acceptance of this Offer, City shall provide to Purchaser, or make available for review by Purchaser and/or Purchaser's Agents, copies of any prior environment assessments, title commitments or surveys for the Property.

Within thirty (30) days following the Effective Date ("Inspection Period"), Purchaser will complete all its investigations, including without limitation, site inspections, environmental investigations, title review, survey review, and other investigations Purchaser considers necessary (collectively "Due Diligence Activities"). Before the expiration of the Investigation Period, Purchaser will notify the City itemizing the unacceptable conditions or matters ("Defects") relating to the Property ("Defect Notice"). Within 10 days of receipt of the Defect Notice, City will notify Purchaser whether it agrees to cure or is unable (or unwillingly given the circumstances of the Defect) to cure any of the Defects contained in the Defect Notice. Upon receipt of the City Response, Purchaser shall have 10 days to elect to waive the Defects and proceed to closing, extend the closing for 30 days under Paragraph 12 or terminate the Agreement. If Purchaser elects to terminate the Agreement, the parties shall have no further rights or obligations under the Agreement.

6. CITY'S REPRESENTATIONS AND WARRANTIES. The City represents and warrants to Purchaser, now and through the closing date, as follows:

A. To the best of its knowledge, there are no claims, legal proceedings or investigations by governmental entities relating to the Property;

B. To the best of its knowledge, there are no agreements, contracts, or leases, written or oral, which affect the Property in any manner other than this Agreement;

C. There is no pending or proposed special assessment or improvements affecting or which may affect the whole or any part of the Property. City has not contracted for the furnishing of labor or materials to the Property which would give rise to a claim of lien before or after the closing.

D. Beginning on the Effective Date, City has full right, power and authority to enter into this Agreement and transfer the Property to Purchaser according to the terms of this Agreement. The person signing the Agreement is authorized to do so.

E. City has good and marketable fee simple title to the Property, free and clear of any and all liens and other encumbrances other than exceptions to title approved or waived by Purchaser.

F. City will cooperate with Purchaser and the title company to the extent necessary to permit the title company to issue a comprehensive endorsement or those endorsements desired by Purchaser.

7. INSURANCE AND LIABILITY TO CITY. Before Due Diligence Activities are conducted on the Property, Purchaser or Purchaser's Agents will provide the City evidence of a policy of commercial general liability insurance with limits of not less than $1,000,000 for bodily injury and $1,000,000 for property damage ($1,000,000 CSL is also acceptable) with an insurance carrier acceptable to the City. This policy shall name "the City, it agents, officials and employees," as additional insureds and shall provide for 30 days' notice to the City if the policy is terminated or cancelled. Purchaser may provide insurance binders or insurance riders as evidence of the insurance coverage required by this paragraph.

Purchaser must pay the City for any loss the City incurs that is caused by Purchaser's or Purchaser's Agents' negligence or misconduct resulting from the Due Diligence Activities conducted on Property. Purchaser is not responsible for any loss that is solely caused by the City, although the City retains all rights it has to assert governmental immunity.

A loss means any amount for which the City is legally responsible, including judgments, settlements, fines, injunctive relief, damages and expenses for defending against a claim for loss. Those expenses include actual fees and costs for and incurred by attorneys, expert witnesses and other advisors retained by the City. A loss may arise from property damage or bodily injury, and includes incidental, direct or consequential damages, regardless of the theory of recovery.

The City will notify Purchaser within a reasonable time when it knows that a claim for loss is asserted against the City for which Purchaser may be liable to pay. The parties will cooperate with each other in good faith on any claim for loss.

8. CONTINGENCIES. The obligation of Purchaser to close the purchase of the Property is contingent upon:

A. Purchaser's reasonable satisfaction with the results of any of the Due Diligence Activities it or Purchaser's Agents conducted.

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

C. The City timely performed its obligations by the date of closing.

If any contingency is not satisfied by the date of closing, including any extension permitted under Paragraph 10, then Purchaser may terminate this Agreement by written notice to City and the parties shall have not further rights or liabilities under this Agreement.

9. PURCHASER COMMITMENTS. As further consideration for this Agreement, Purchaser agrees that it will not improve the Property in conflict with the site plan it has or will submit for the City's approval, and specifically in conflict with the 'Clear Vision Restrictions' detailed in Exhibit B.

10. ENVIRONMENTAL ASSESSMENT. During the Investigation Period, Purchaser may, at its own expense and for its own benefit, conduct all appropriate inquiry within the meaning of Part 201 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, (Act 451). If such inquiry identifies the Property as a facility, Purchaser may elect to complete and submit a Baseline Environmental Assessment ("BEA") to the Michigan Department of Environmental Quality ("MDEQ") as provided under Act 451, and if Purchaser elects to file a BEA, Purchaser shall also maintain on file a Due Care Plan.

11. CITY COMMITMENTS. The City agrees to complete the following:

A. Provide copies of all available environmental reports for the Property. If there are any facts or conditions contained in the reports which are unacceptable to Purchaser, Purchaser shall have the right to terminate this Agreement by giving written notice to the City as provided in Paragraph 5.

B. No official, board member, officer or employee of the City or the City is personally liable to Purchaser or its successor in interest upon a breach or default by the City for any amount payable to Purchaser or its successor or any obligation under this Agreement; except acts of intentional misconduct or fraud.

12. CLOSING. Subject to Paragraph 5, the closing shall occur on a date mutually agreeable to the parties, but in no event later than 90 days from the Effective Date of this Agreement. Regardless of the preceding, Purchaser shall have the right to extend the closing date for an additional 30 days to complete its Due Diligence Activities or to attempt to satisfy contingencies.

13. POSSESSION. Subject to the easement rights retained by the City, Purchaser shall be entitled to sole and exclusive possession upon payment of the purchase price and receipt of the warranty deed to the Property.

14. TAXES. The Property is currently exempt from the payment of taxes. Beginning with December 31 of the year in which Purchaser acquired the Property, Purchaser shall be responsible for the taxes, if any, levied against the Property.

15. ENVIRONMENTAL CONCERNS. Purchaser, having the opportunity to conduct Due Diligence Activities regarding the Property, accepts the Property in "AS IS" condition. The City makes no representations regarding environmental hazards or liabilities on or relating to the Property.

16. CITY APPROVAL. The approval by the City Commission for the City of Kalamazoo is required before this Agreement is effective and binding. The date that the City approves of the Agreement is defined as the "Effective Date." If such approval is not made within 60 days after Purchaser has signed this Agreement, it shall be deemed null and void and of no force and effect.

17. SURVEY. Seller has provided Purchaser with a survey of the Property ("Survey"), as noted in Exhibit A. If Purchaser finds any Defects shown in the Survey during the Investigation Period, Purchaser shall use the process set forth in Paragraph 5.

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

19. MAINTENANCE. As long as Purchaser, or any entity in which Purchaser has a controlling interest, owns the Property, Purchaser agrees to continue to maintain the property in accordance with all applicable federal, state or local laws, ordinances, specifically to include building, housing or zoning codes.

20. NOTICES. Any notice or other communication under this Agreement by one party to the other shall be in writing, signed by an authorized representative and delivered in person or by certified mail, postage prepaid with return receipt requested to the following:

Purchaser:

Burdick-Crosstown Square, LLC
Attn: Damon Geary
4429 Grand Prairie Rd
Kalamazoo, MI 49006

with copies to:

City:

City of Kalamazoo
Attn: City Manager
241 West South Street
Kalamazoo, MI 49007

w/copies to the City Attorney at above address

Each party shall notify the other of any changes in the address for the receipt of notices.

21. Real Estate Brokers. Neither party has retained the services of a real estate broker regarding this transaction. If a broker makes a claim for remuneration in connection with the Purchase, the party against whom the claim is made is responsible for paying any commission or other compensation for which the broker is entitled to receive.

22. Miscellaneous.

A. This Agreement shall bind and benefit the City, Purchaser and their respective successors or assigns.

B. This Agreement may not be amended, altered or modified unless done in writing and signed by representatives of the parties who are so authorized.

C. This Agreement may be signed in counterparts, which together shall comprise a single agreement.

D. This Agreement and the exhibits to this Agreement contain all of the representations and statements by the City and Purchaser to one another and express the entire understanding between them with respect to the Purchase. All prior and contemporaneous communications concerning the transaction are merged in and replaced by this Agreement.

Date: _______________, 2015

Burdick-Crosstown Square, LLC

By: _________________________
Damon Geary
Its: Authorized Member

Dated: _______________, 2015

City of Kalamazoo

By: ________________________
James K. Ritsema
Its: City Manager

This instrument drafted by:
John W. Kneas (P26112)
Assistant City Attorney
241 W. South Street
Kalamazoo, MI 49007

## BOUNDARY SURVEY

***FURNISHED DESCRIPTION ( #06-22-336-010 )***

COMMENCING ON THE WEST LINE OF SOUTH BURDICK STREET, 44 1/2 RODS ( 734.25 FEET ) SOUTH OF THE INTERSECTION OF SAID WEST LINE WITH THE EAST AND WEST 1/4 LINE OF SECTION 22, TOWN 2 SOUTH, RANGE 11 WEST; THENCE NORTH ALONG THE WEST LINE OF SAID STREET, 38 FEET; THENCE NORTH 89°48'48" WEST, 93.24 FEET TO THE EASTERLY LINE OF CROSSTOWN PARKWAY; THENCE SOUTHWESTERLY ( SOUTH 48°40'52" WEST, 7.65 FEET; TO A POINT 99 FEET WEST OF THE WEST LINE OF SOUTH BURDICK STREET; THENCE SOUTH 0°05'38" EAST, 32.82 FEET, PARALLEL WITH THE WEST LINE OF SOUTH BURDICK STREET; THENCE SOUTH 89°48'43" EAST, 99.00 FEET TO THE POINT OF BEGINNING. EXCEPT THE EAST 7 FEET THEREOF.
ALSO: COMMENCING ON THE WEST LINE OF SOUTH BURDICK STREET, 866.65 FEET SOUTH OF THE SOUTH LINE OF BURR OAK STREET; THENCE SOUTH 0°05'38" EAST, ALONG SAID WEST LINE, 58 FEET; THENCE NORTH 89°48'35" WEST, 99.00 FEET; THENCE NORTH 0°05'38" WEST, 58 FEET; THENCE SOUTH 89°48'43 " EAST, 99 FEET TO THE POINT OF BEGINNING.

***DESCRIPTION OF 7' EASEMENT AREA ( LYING EAST OF #06-22-336-010 TO BE JOINED TO #06-22-336-010 )***

BEGINNING ON THE WEST LINE OF SOUTH BURDICK STREET, 44 1/2 RODS ( 734.25 FEET ) SOUTH OF THE INTERSECTION OF SAID WEST LINE WITH THE EAST AND WEST 1/4 LINE OF SECTION 22, TOWN 2 SOUTH, RANGE 11 WEST; THENCE NORTH 89°48'43" WEST, 7.0 FEET; THENCE NORTH 0°05'38" WEST, 38.00 FEET; THENCE SOUTH 89°48'48" EAST, 7.0 FEET TO SAID WEST LINE; THENCE SOUTH 0°05'38" EAST, ON SAID WEST LINE, 38.00 FEET TO THE POINT OF BEGINNING.

***NEW DESCRIPTION #06-22-336-010 ( AFTER PROPERTY LINE ADJUSTMENTS AND CLEARVISION RESTRICTIONS )***

COMMENCING ON THE WEST LINE OF SOUTH BURDICK STREET, 44 1/2 RODS ( 734.25 FEET ) SOUTH OF THE INTERSECTION OF SAID WEST LINE WITH THE EAST AND WEST 1/4 LINE OF SECTION 22, TOWN 2 SOUTH, RANGE 11 WEST; THENCE NORTH ALONG THE WEST LINE OF SAID STREET, 38 FEET; THENCE NORTH 89°48'48" WEST, 93.24 FEET TO THE EASTERLY LINE OF CROSSTOWN PARKWAY; THENCE SOUTHWESTERLY ( SOUTH 48°40'52" WEST, 7.65 FEET; TO A POINT 99 FEET WEST OF THE WEST LINE OF SOUTH BURDICK STREET; THENCE SOUTH 0°05'38" EAST, 32.82 FEET, PARALLEL WITH THE WEST LINE OF SOUTH BURDICK STREET; THENCE SOUTH 89°48'43" EAST, 99.00 FEET TO THE POINT OF BEGINNING.
ALSO: COMMENCING ON THE WEST LINE OF SOUTH BURDICK STREET, 866.65 FEET SOUTH OF THE SOUTH LINE OF BURR OAK STREET; THENCE SOUTH 0°05'38" EAST, ALONG SAID WEST LINE, 58 FEET; THENCE NORTH 89°48'35" WEST, 99.00 FEET; THENCE NORTH 0°05'38" WEST, 58 FEET; THENCE SOUTH 89°48'43 " EAST, 99 FEET TO THE POINT OF BEGINNING.
SUBJECT TO CLEARVISION RESTRICTIONS FOR SOUTHBURDICK STREET LYING WEST OF A LINE DESCRIBED AS: COMMENCING AT THE NORTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE SOUTH 0°05'38" EAST, 12.1 FEET TO THE POINT OF BEGINNING OF SAID CLEARVISON LINE; THENCE NORTH 19°04'15" WEST, ALONG SAID LINE, 12.81 FEET TO THE NORTH LINE OF ABOVE DESCRIBED PARCEL AND POINT OF ENDING OF SAID LINE, SAID POINT BEING 4.09 FEET NORTH 89°48'48" WEST, FROM NORTHEAST CORNER OF SAID PARCEL.
ALSO SUBJECT TO CLEARVISION RESTRICTIONS FOR CROSSTOWN PARKWAY LYING EAST OF A LINE DESCRIBED AS: COMMENCING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE SOUTH 89°48'48" EAST, ALONG THE NORTH LINE OF SAID PARCEL, 1.9 FEET TO THE POINT OF BEGINNING OF SAID CLEARVISION LINE; THENCE SOUTH 61°31'02" WEST, ALONG SAID LINE, 5.67 FEET TO THE POINT OF ENDING OF SAID LINE, SAID POINT BEING 4.11 SOUTHWESTERLY FROM THE NORTHWEST CORNER OF SAID PARCEL.

***UNNUMBERED CITY OWNED PROPERTY ( LYING N. OF BORN CT. PUMPING AREA AND W. OF PARCEL #06-22-336-010 )***

COMMENCING ON THE WEST LINE OF SOUTH BURDICK STREET, 44 1/2 RODS ( 734.25 FEET ) SOUTH OF THE INTERSECTION OF SAID WEST LINE WITH THE EAST AND WEST 1/4 LINE OF SECTION 22, TOWN 2 SOUTH, RANGE 11 WEST; THENCE NORTH 89°48'43" WEST, 99.00 FEET TO THE POINT OF BEGINNING: THENCE CONTINUING NORTH 89°48'43" WEST, 37.25 FEET TO THE EAST LINE OF CROSSTOWN PARKWAY; THENCE NORTHEASTERLY, 49.53 FEET, ALONG THE ARC OF A 1312.66 RADIUS CURVE TO THE RIGHT, TO THE FAR END A OF CHORD BEARING NORTH 48°40'52" EAST, 49.52 FEET; THENCE SOUTH 0°05'38" EAST, 32.82 FEET TO THE POINT OF BEGINNING.

***CITY OWNED PROPERTY #06-22-336-003***

COMMENCING ON THE WEST LINE OF SOUTH BURDICK STREET, 44 1/2 RODS ( 734.25 FEET ) SOUTH OF THE INTERSECTION OF SAID WEST LINE WITH THE EAST AND WEST 1/4 LINE OF SECTION 22, TOWN 2 SOUTH, RANGE 11 WEST; THENCE NORTH ALONG THE WEST LINE OF SAID STREET, 38 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°48'48" WEST, 93.24 FEET TO THE EASTERLY LINE OF CROSSTOWN PARKWAY; THENCE NORTHEASTERLY, 43.21 FEET ALONG THE ARC OF A 1312.66 FOOT RADIUS CURVE TO THE RIGHT TO THE FAR END OF A CHORD BEARING NORTH 49°47'28" EAST, 43.21 FEET; THENCE SOUTH 89°48'48" EAST, 60.20 FEET TO THE WESTERLY SIDE OF SOUTH BURDICK; THENCE SOUTH 0°05'38" EAST, 28.00 FEET TO THE POINT OF BEGINNING.
SUBJECT TO CLEARVISION AREA RESTRICTIONS FOR SOUTH BURDICK STREET LYING EAST OF A LINE DESCIBRED AS: COMMENCING AT THE NORTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE NORTH 89°48'48" WEST, 13.81 FEET TO THE POINT OF BEGINNING OF DESCRIBED CLEARVISON LINE; THENCE SOUTH 19°04'15" EAST, 29.66 FEET TO THE SOUTH LINE OF SAID PARCEL AND END OF SAID RESTRICTION LINE, SAID POINT BEING 4.17 FEET, NORTH 89°48'48" WEST, OF THE SOUTHEAST CORNER OF SAID PARCEL.
ALSO SUBJECT TO CLEARVISION AREA RESTRICTIONS FOR CROSSTOWN PARKWAY LYING WEST OF A LINE DESCRIBED AS: COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL; THENCE NORTH 89°48'48" EAST, 1.9 FEET TO THE POINT OF BEGINNING OF DESCRIBED CLEARVISION LINE; THENCE NORTH 61°31'02" EAST, 58.63 FEET TO THE NORTH LINE OF SAID PARCEL AND END OF SAID RESTRICTION LINE, SAID POINT BEING 20.20 FEET, SOUTH 89°48'48" EAST, OF THE NORTHWEST CORNER OF SAID PARCEL.

***PART OF CITY OWNED PROPERTY #06-22-336-002***

BEGINNING ON THE WEST LINE OF SOUTH BURDICK STREET, 668.25 FEET SOUTH OF THE INTERSECTION OF SAID WEST LINE WITH THE EAST AND WEST 1/4 LINE OF SECTION 22, TOWN 2 SOUTH, RANGE 11 WEST; THENCE NORTH 89°48'48" WEST, 60.20 FEET TO THE EASTERLY EDGE OF CROSSTOWN PARKWAY; THENCE NORTHEASTERLY, ON SAID EASTERLY LINE, 49.03 FEET, ON THE ARC OF A 1312.66 FOOT RADIUS CURVE TO THE RIGHT TO THE FAR END OF A CHORD BEARING, NORTH 51°48'15" EAST, 49.03 FEET TO WHERE SAID EASTELRY LINE INTERSECTS THE BACK OF A CONCRETE SIDEWALK; THENCE SOUTHEASTERLY, ALONG SAID BACK OF WALK, 17.07 FEET ON THE ARC OF A 15.39 FOOT RADIUS CURVE TO THE RIGHT TO THE FAR END OF A CHORD BEARING, SOUTH 64°26'42" EAST, 16.21 FEET; THENCE SOUTHEASTERLY, CONTINUING ON BACK OF WALK, 21.16 FEET ON THE ARC OF A 47.15 FOOT RADIUS CURVE TO THE RIGHT TO THE FAR END OF A CHORD BEARING SOUTH 19°39'02" EAST, 20.94 FEET; THENCE SOUTH 0°05'38" EAST, 3.75 FEET TO THE POINT OF BEGINNING.
SUBJECT TO CLEAR VISION RESTRICTIONS FOR SOUTH BURDICK STREET AND CROSS TOWN PARKWAY NORTH OF A LINE DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL: THENCE NORTH 89°48'48" WEST, 13.81 FEET TO THE POINT OF BEGINNING OF SAID RESTRICTION LINE; THENCE NORTH 19°04'15" WEST, 12.73 FEET; THENCE SOUTH 61°31'02" WEST, 25.05 FEET; TO THE POINT OF ENDING OF SAID LINE, SAID POINT BEING 20.20 FEET EASTERLY OF THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PARCEL.



SURVEY CERTIFICATE:
I, RAYMOND E. MOORED, PROFESSIONAL SURVEYOR IN THE STATE OF MICHIGAN, HEREBY CERTIFY THAT I HAVE SURVEYED THE PARCEL OF LAND DESCRIBED AND DELINEATED HEREON; THAT SAID PLAT IS A TRUE AND ACCURATE REPRESENTATION OF THE SURVEY AS PERFORMED BY ME; AND THAT THERE ARE NO ENCROACHMENTS OTHER THAN THOSE AS SHOWN ON THE SURVEY; AND THAT THE RATIO OF CLOSURE IS WITHIN THE ACCURACIES AS REQUIRED IN ACT 288 OF PUBLIC ACTS OF 1967. THIS SURVEY COMPLIES WITH THE REQUIREMENTS OF SECTION 3, PUBLIC ACT 132 OF 1970. ACT 591 OF MICHIGAN PUBLIC ACTS OF 1996 SHOULD BE CHECKED TO SEE THAT ANY CONVEYANCE DOES NOT VIOLATE THIS ACT.
FURTHERMORE, THE SURVEYOR'S SIGNATURE AND SEAL MUST BE ORIGINAL AND BE ANY COLOR OTHER THAN BLACK. OTHERWISE, THE PLAN MUST BE ASSUMED TO BE AN UNAUTHORIZED COPY AND COULD CONTAIN ALTERATIONS. THIS CERTIFICATION SHALL ONLY APPLY TO ORIGINAL COPIES.

DATE Raymond E. Moored P.S. # 26463

Revised 08-10-15
( TYPO. )

CLIENT: KAVAN GEARY
DATE: 06-17-15 JOB NO.: 15-0514

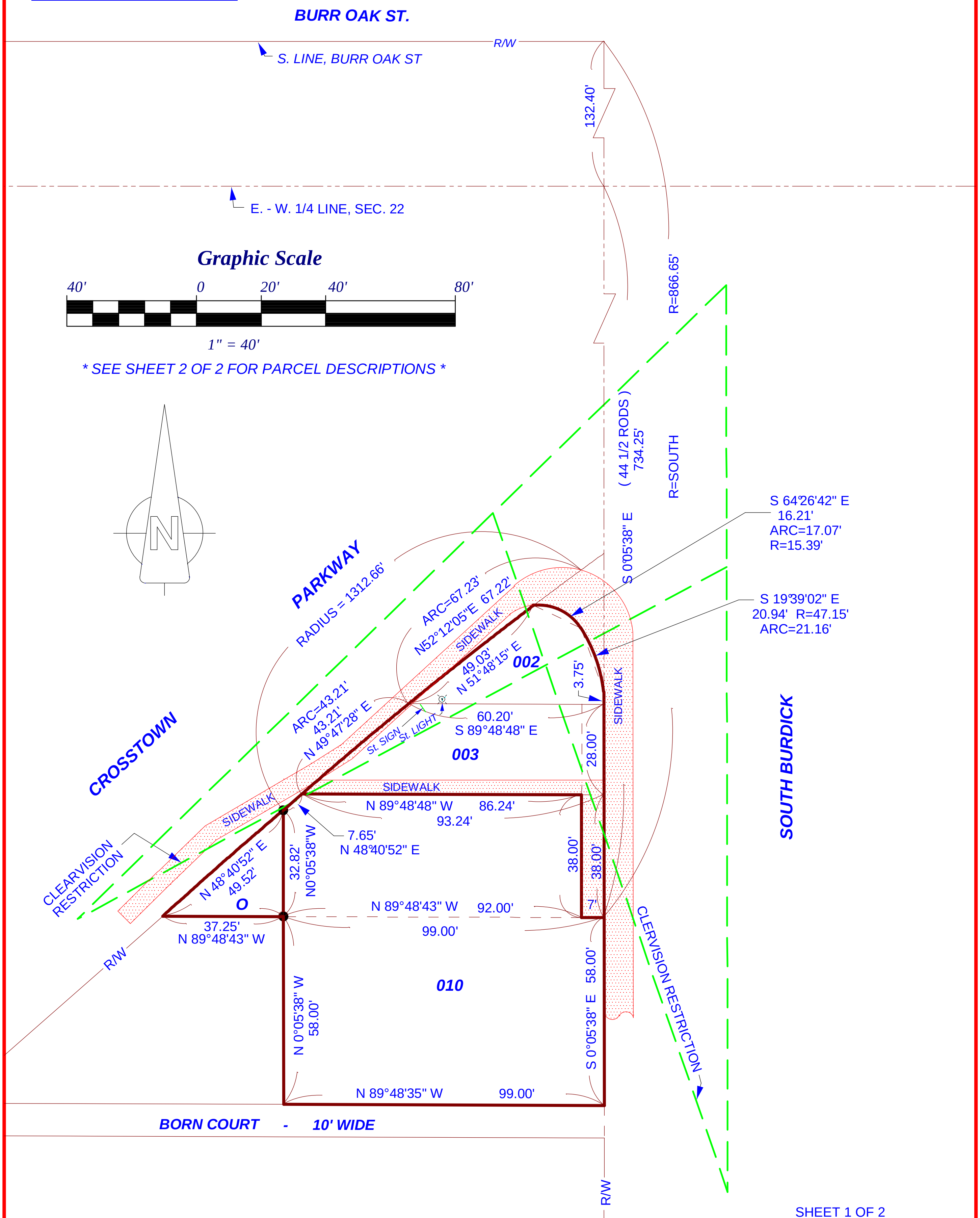
LOCATION: city of KALAMAZOO TWP., KALAMAZOO CO.
SECTION: 22, TOWN: 2S, RANGE: 11W

LEGEND

- ○ SET IRON
- ● FOUND IRON
- □ PLAT MON.
- M MEASURED DIST.
- R RECORDED DIST.
- —x—x— FENCE

MOORED LAND SURVEYING, LLC
240 MONROE STREET Telephone 1-269-673-6402
P.O. BOX 291 Fax 1-269-673-8192
ALLEGAN, MICHIGAN 49010

# BOUNDARY SURVEY




SURVEY CERTIFICATE:
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FURTHERMORE, THE SURVEYOR'S SIGNATURE AND SEAL MUST BE ORIGINAL AND BE ANY COLOR OTHER THAN BLACK. OTHERWISE, THE PLAN MUST BE ASSUMED TO BE AN UNAUTHORIZED COPY AND COULD CONTAIN ALTERATIONS. THIS CERTIFICATION SHALL ONLY APPLY TO ORIGINAL COPIES.

DATE Raymond E. Moored P.S. # 26463

Revised____________________

CLIENT: KAVAN GEARY
DATE: 06-17-15 JOB NO.: 15-0514

LOCATION: city of KALAMAZOO TWP., KALAMAZOO CO.
SECTION: 22, TOWN: 2S, RANGE: 11W

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240 MONROE STREET
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ALLEGAN, MICHIGAN 49010
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Fax 1-269-673-8192

# Commission Agenda Report

City of Kalamazoo

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

**FROM:** Clyde J. Robinson, City Attorney

**DATE:** 12/22/2015

**SUBJECT:** METRO Act Permit Authorization

**RECOMMENDATION**

It is recommended that the City Commission authorize the City Manager to grant a Unilateral Permit to 123.Net, Inc., pursuant to the Metropolitan Extension Telecommunications Right of Way Oversight (METRO) Act, MCL 484.3101 et seq.

**BACKGROUND**

The City has received a request from 123.Net, Inc., which is a competitive local exchange carrier seeking permission from the City to access the public right of way to install fiber optic wire in existing AT&T conduit under W. Water Street between the Kalamazoo Mall and the West Michigan Cancer Center. Work would commence the week of January 11, 2016. 123.Net, Inc. seeks a Unilateral Permit under the METRO Act which grants them a 5 year term which can be renewed in the future. The Application Packet accompanying the request includes all the necessary support documents and evidence of required insurance coverage.

**COMMUNITY RESOURCES CONSULTED**

None.

**FISCAL IMPACT**

The $500.00 State mandated fee accompanied the request. Over the next five years the City will receive a nominal increase in its METRO Act payment from the State due to the installation of equipment by 123.Net, Inc.

**ALTERNATIVES**

If the City Commission does not act to approve the application, it will be deemed approved within 45 days after permission was requested. As there does not appear any procedural or legal reason to refuse the request, refusing the request is not recommended.

**ATTACHMENTS:**

| Type | Description |
|---|---|
| 🗋 | Agreement Application and Proposed Permit |

**METRO Act Permit Application Form**
**Revised April 6, 2012**

**City of Kalamazoo**

**APPLICATION FOR**
**ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY TELECOMMUNICATIONS PROVIDERS**
**UNDER**
**METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT ACT**
**2002 PA 48**
**MCL SECTIONS 484.3101 TO 484.3120**

**BY**

**123 Net, Inc.**

MASTER COPY

**Unfamiliar with METRO Act?--Assistance:** Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Telecommunications Division of the Michigan Public Service Commission at 517-241-6200 or via its web site at http://www.michigan.gov/mpsc/0,4639,7-159-16372_22707---,00.html.

**45 Days to Act—Fines for Failure to Act:** The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3). The Michigan Public Service Commission can impose fines of up to $40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

**Where to File:** Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows]:

-- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at:

Scott A. Borling
City Clerk
City of Kalamazoo
241 West South Street
Kalamazoo, MI 49007

**<u>City of Kalamazoo</u>**
Name of local unit of government

**APPLICATION FOR**
**ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY**
**TELECOMMUNICATIONS PROVIDERS**

**By**
**[123 Net Inc.]**
**("Applicant")**

***This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3).***

***This application must be accompanied by a one-time application fee of $500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCL 484.3105(3).***

---

# 1 <u>GENERAL INFORMATION</u>:

**1.1** Date: **November 16, 2015**

1.2 Applicant's legal name: **123.Net, Inc.**
Mailing Address: **24700 Northwestern Highway**
**Suite 700**
**Southfield, MI 48075**

Telephone Number: **(248) 228-8214**
Fax Number: ______________________
Corporate website: **123.net**

Name and title of Applicant's local manager (and if different) contact person regarding this application:
**Bill Bell – Fiber Project Manager**
Mailing Address: **24700 Northwestern Highway**
**Suite 700**
**Southfield, MI 48075**
Telephone Number: **(248) 228-8251**

Fax Number: **(248) 849-9333**
E-mail Address: **bbell@123.net**

1.3 Type of Entity: (Check one of the following)

__X__ Corporation
_____ General Partnership
_____ Limited Partnership
_____ Limited Liability Company
_____ Individual
_____ Other, please describe: ______________________________

1.4 Assumed name for doing business, if any: ______________________
1.5 Description of Entity:

**1.5.1** Jurisdiction of incorporation/formation; **Michigan**

**1.5.2** Date of incorporation/formation; **8-16-1996**

1.5.3 If a subsidiary, name of ultimate parent company;

1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).

**James Kandler**
**Dan Irvin**
**Stefania Gradinaru**
**Simona Anton**

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Licensing and Regulatory Affairs and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for non-corporate entities, provide equivalent information.
**Please see attached.**

1.7 Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe: **None.** ______________________________

____________________________________________________________.

1.8 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

*Circle:* *Yes* *No*

*If "yes," please describe the circumstances.*

1.9 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

1.9.1 A felony; or

1.9.2 A revocation or suspension of any authorization (including cable franchises) to provide telecommunications or video programming services?

*Circle: Yes No*

*If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.*

1.10 [If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied.] If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain.

**N/A, Applicant is a CLEC**

1.10.1 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

*If no financial statements are provided, please explain and provide particulars.*

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## 2 DESCRIPTION OF PROJECT:

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

**Proposed project involves underground installation of fiber optic cable inside 1.25" HPDE conduit using either methods as directional boring or trenching. The proposed route will begin at a manhole at intersection of S Kalamazoo Mall and W Water St continuing West along South side of W Water St. The route will then cross W Water St into building at 200 N Park St. Route will be traveling by ATT conduit or by new build underground.**

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the extent known, please identify the side of the street on which the facilities will be located. (If construction approval is sought at this time, provide engineering drawings, if available, showing location and depth, if applicable, of facilities to be installed in the public right-of-way).


**The proposed route will begin at a manhole at intersection of S Kalamazoo Mall and W Water St continuing West along South side of W Water St. The route will then cross W Water St into building at 200 N Park St.**

2.4 Please provide an anticipated or actual construction schedule.

**Would like to begin construction the week of 1/11/16. Construction will take one week with restoration.**

2.5 Please list all organizations and entities which will have any ownership interest in the facilities proposed to be installed in the Public Ways.

**123.Net, Inc.**

2.6 Who will be responsible for maintaining the facilities Applicant places in the Public Ways and how are they to be promptly contacted? If Applicant's facilities are to be installed on or in existing facilities in the Public Ways of existing public utilities or incumbent telecommunications providers, describe the facilities to be used, and provide verification of their consent to such usage by Applicant.

**123.Net, Inc.**
**(866) 460-3503**
**NOC@123.NET**

## 3 TELECOMMUNICATION PROVIDER ADMINISTRATIVE MATTERS:

*Please provide the following or attach an appropriate exhibit.*

3.1 Address of Applicant's nearest local office;

**24700 Northwestern Highway**
**Suite 700**
**Southfield, MI 48075**

3.2 Location of all records and engineering drawings, if not at local office;

3.3 Names, titles, addresses, e-mail addresses and telephone numbers of contact person(s) for Applicant's engineer or engineers and their responsibilities for the telecommunications system;

**Bill Bell**
**Fiber Project Manager**
**24700 Northwestern Highway**
**Suite 700**
**Southfield, MI 48075**

3.4 Provide evidence of self-insurance or a certificate of insurance showing Applicant's insurance coverage, carrier and limits of liability for the following:

3.4.1 Worker's compensation;

3.4.2 Commercial general liability, including at least:

3.4.2.1 Combined overall limits;

3.4.2.2 Combined single limit for each occurrence of bodily injury;

3.4.2.3 Personal injury;

3.4.2.4 Property damage;

3.4.2.5 Blanket contractual liability for written contracts, products, and completed operations;

3.4.2.6 Independent contractor liability;

3.4.2.7 For any non-aerial installations, coverage for property damage from perils of explosives, collapse, or damage to underground utilities (known as XCU coverage);

3.4.2.8 Environmental contamination;

3.4.3 Automobile liability covering all owned, hired, and non-owned vehicles used by Applicant, its employee, or agents.

**Please see attached.**

3.5 Names of all anticipated contractors and subcontractors involved in the construction, maintenance and operation of Applicant's facilities in the Public Ways.

**N/A**

## 4 CERTIFICATION:

*All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.*

**123.Net, Inc.**

11-30-2015
Date

By:
**Rachel E. Wisley, Esq.**
**123.Net General Counsel**

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**METRO Act**
**Unilateral Form**
**Revised 12/06/02**

# RIGHT-OF-WAY TELECOMMUNICATIONS PERMIT

This permit issued this ___ day of ______, 20__ by the City of Kalamazoo.

1 Definitions

1.1 Date of Issuance shall mean the date set forth above.

1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.

1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.

1.4 Municipality shall mean the City of Kalamazoo, a Michigan municipal corporation.

1.5 Permit shall mean this document.

1.6 Permittee shall mean 123.Net, Inc. organized under the laws of the State of Michigan whose address is 24700 Northwestern Hwy., Ste. 700, Southfield, MI 48075.

1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.

1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.

1.9 Term shall have the meaning set forth in Part 7.

## 2 Grant

2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install and maintain Telecommunication Facilities on the terms set forth herein.

2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.

2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.

2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

## 3 Contacts, Maps and Plans

3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:

3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is **Myles Kernohan, Fiber Division Manager, 24700 Northwestern Hwy., Ste 700, Southfield, MI 48075, (248) 228-8243, mkernohan@123.net.**

3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is _____. [N/A]

3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is same as in 3.1.1.

3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is same as in 3.1.1.

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 <u>Route Maps</u>. Within ninety (90) days after the substantial completion of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 <u>As-Built Records</u>. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 <u>Use of Public Right-of-Way</u>

4.1 <u>No Burden on Public Right-of-Way</u>. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.

4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.

4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.

4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.

4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.

4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.

4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

5.2 Notice, Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.

5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars ($5,000,000).

6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars ($500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

6.1.3 Automobile liability insurance in an amount not less than One Million Dollars ($1,000,000).

6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of $50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.

6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

7.1.1 Five years or less from the Date of Issuance; or

7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or

7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

8.1 Municipal Requirement. Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the

ownership or control of Permittee's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to ______________________________________.

12.1.2 If to Permittee, **to Myles Kernohan at 24700 Northwestern Hwy., Ste. 700, Southfield, MI 48075, with a copy to mkernohan@123.net.**

12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.

13.3 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].

13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Kalamazoo

By:______________________________
Its:______________________________
Date:_________

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

123.Net, Inc.

By:______________________________
Its:______________________________
Date:_________

## Exhibit A

## Public Right-of-Way to be Used by Telecommunication Facilities

**Exhibit B**

**Bond**

::ODMA\PCDOCS\GRR\764521\3

123NE-1 OP ID: GB

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/25/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**
Tim Crawford Ins. Agency Inc.
1415 Walton Blvd.
Rochester Hills, MI 48309
Robert Carabelli

CONTACT NAME: Robert Carabelli
PHONE (A/C, No, Ext): 248-402-5005 FAX (A/C, No): 248-652-4420
E-MAIL ADDRESS: caraber@nationwide.com

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : CNA | |
| INSURER B : | |
| INSURER C : | |
| INSURER D : | |
| INSURER E : | |
| INSURER F : | |

**INSURED**
123.Net, Inc.; Local Exchange
Carriers of MI Corp; etal
24700 Northwestern Hwy Ste 700
Southfield, MI 48075

**COVERAGES** CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY; CLAIMS-MADE; X OCCUR; GEN'L AGGREGATE LIMIT APPLIES PER: POLICY; PRO-JECT; X LOC; OTHER: | X | | 4024082653 | 08/30/2015 | 08/30/2016 | EACH OCCURRENCE | $ 2,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 300,000 |
| | | | | | | | MED EXP (Any one person) | $ 10,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 2,000,000 |
| | | | | | | | GENERAL AGGREGATE | $ 4,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | $ 4,000,000 |
| | | | | | | | | $ |
| A | AUTOMOBILE LIABILITY; X ANY AUTO; ALL OWNED AUTOS; X SCHEDULED AUTOS; X HIRED AUTOS; X NON-OWNED AUTOS | | | 6011153135 | 08/30/2015 | 08/30/2016 | COMBINED SINGLE LIMIT (Ea accident) | $ 1,000,000 |
| | | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| A | X UMBRELLA LIAB; X OCCUR; EXCESS LIAB; CLAIMS-MADE; DED; X RETENTION $ 10000 | | | 4024083026 | 08/30/2015 | 08/30/2016 | EACH OCCURRENCE | $ 6,000,000 |
| | | | | | | | AGGREGATE | $ 6,000,000 |
| | | | | | | | | $ |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N; ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH); If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | 4024083026 | 08/30/2015 | 08/30/2016 | X PER STATUTE; OTH-ER | |
| | | | | | | | E.L. EACH ACCIDENT | $ 1,000,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 1,000,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ 1,000,000 |
| A | Property | | | 4024082653 | 08/30/2015 | 08/30/2016 | Bldgs/BPP | 7,798,279 |
| A | Employee Dishonest | | | 4024082653 | 08/30/2015 | 08/30/2016 | Crime | 25,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Kalamazoo is an additional insured with respect to general liability and work performed on their behalf by the named insured.

**CERTIFICATE HOLDER**

City of Kalamazoo
241 West South Street
Kalamazoo, MI 49007

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Robert C Carabelli

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Vers 4.1 (02/14)

# DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
# CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
# PROFIT CORPORATION INFORMATION UPDATE
## 2015

[X] **On behalf of the Corporation, I certify that no changes have occurred in required information since the last filed annual report.**

| Identification Number | Corporation Name |
| --- | --- |
| 413969 | 123.NET, INC. |

Resident agent name and mailing address of the registered office

DAN IRVIN

MI

The address of the registered office

24700 NORTHWESTERN HWY. STE. 700

SOUTHFIELD MI 48075

Describe the purpose and activities of the corporation during the year covered by this report:

## Electronic Signature

| Filed By | Title | Phone |
| --- | --- | --- |
| STEFANIA STOENICA | AUTHORIZED OFFICER OR AGENT | 2482288206 |

[X] **I certify that this filing is submitted without fraudulent intent and that I am authorized by the business entity to make any changes reported herein.**

## Payment Information

| Payment Amount | Payment Date/Time | Reference Nbr |
| --- | --- | --- |
| $ 25 | 01/28/2015 12:18:46 | 71315 6801 413969 2015 |

Department of Licensing and Regulatory Affairs

MICHIGAN.GOV Michigan's Official Web Site



## CORPORATE ENTITY DETAILS

**Searched for:** 123.NET, INC.

**ID Num:** 413969

Assumed Names

**Entity Name:** 123.NET, INC.

**Type of Entity:** Domestic Profit Corporation

**Resident Agent:** DAN IRVIN

**Registered Office Address:** 24700 NORTHWESTERN HWY. STE. 700 SOUTHFIELD MI 48075

**Mailing Address:** MI

**Formed Under Act Number(s):** 284-1972

**Incorporation/Qualification Date:** 8-16-1996

**Jurisdiction of Origin:** MICHIGAN

**Number of Shares:** 60,000

**Year of Most Recent Annual Report:** 15

**Year of Most Recent Annual Report With Officers & Directors:** 14

**Status:** ACTIVE **Date:** Present

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# Commission Agenda Report
City of Kalamazoo

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

**FROM:** Scott A. Borling, City Clerk

**DATE:** 12/30/2015

**SUBJECT:** Approval of City Commission Minutes

**RECOMMENDATION**

It is recommended that the City Commission approve the minutes from its meeting on December 14, 2015.

**ATTACHMENTS:**

| Type | Description |
|---|---|
| Minutes | December 14, 2015 Special Work Session Minutes |

A special work session of the Kalamazoo City Commission was held on Monday, December 14, 2015 at 4:00 p.m. in the Community Room at City Hall. The purpose of the meeting was to discuss the FY2016 Budget.

Roll Call

| | |
|---|---|
| COMMISSIONERS PRESENT: | Mayor Bobby Hopewell<br>Vice Mayor Don Cooney<br>David Anderson<br>Erin Knott<br>Matt Milcarek<br>Jack Urban |
| COMMISSIONERS ABSENT: | Shannon Sykes* |

Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.

Commissioner Excused

Commissioner Anderson, seconded by Vice Mayor Cooney, moved to excuse the absence of Commissioner Sykes. With a voice vote the motion passed.

Communications

An opportunity was given for general communications, but none were offered.

*Commissioner Sykes arrived at 4:04 p.m.

Presentation on the Proposed FY2016 Budget

City Manager Ritsema and Management Services Director Tom Skrobola, delivered a PowerPoint presentation entitled *FY2016 Proposed Budget*. A copy of the presentation was filed with the papers for this meeting.

In response to a question from Commissioner Cooney, Director Skrobola reported the City's state revenue sharing receipts had declined from $12.5 million in 2002 to $8.8 million in 2015.

In response to a question from Commissioner Urban, Director Skrobola stated the rate of return for the Other Post-Employment Benefits (OPEB) Trust Fund in 2015 had been level – there had been no losses or gains.

In response to a question from Commissioner Anderson, Director Skrobola explained the $700,000 in one-time Industrial Personal Property revenue would go away as personal property would become exempt in 2016.

In response to a question from Commissioner Milcarek, Economic Development Director Jerome Kisscorni explained how the funds in the Economic Initiative Fund had been used and stated there were approximately 20 loans outstanding whose payments and interest would replenish the fund over time.

Mayor Hopewell noted the proposed deficit reduction measures for 2016 were one-time fixes, and he stated the outlook would look much different if the City Commission decided to maintain the $1.5 million General Fund contribution to the street funds. Mayor Hopewell stated the City needed to explain to the community how one-time solutions happened so people did not think the City was "crying wolf" with regard to its budget situation.

Discussion of Street Funding

City Manager Ritsema opened a discussion on the continued use of General Fund dollars for streets, in light of increased road funding from the state.

Commissioner Anderson asked how far behind the City was in maintaining its streets.

Mayor Hopewell asked for the total dollar amount that would be spent on streets, and the impact of those dollars, if the City continued transferring money from the General Fund to the Major and Local Streets Funds.

Commissioner Urban requested a report on how far behind the City was in street repair/replacement, in dollars per year.

Commissioner Anderson remarked that the City had been borrowing money for years to fix roads, and he asked if the new road funds from the state would allow the City to stop borrowing.

City Manager Ritsema remarked on the distinction between operational funding and capital funding, and he indicated the debt cycle was not expected to end soon. City Manager Ritsema stated it would take a lot of discipline to get out of the debt cycle.

City Manager Ritsema noted the state had fixed the road funding problem, but in 2021 it would have to plug its own General Fund budget hole. City Manager Ritsema stated there was a concern that legislators would further reduce revenue sharing payments to local governments in order to fill the budget gap created by increased funding for streets and roads.

Mayor Hopewell suggested the City create a streets or infrastructure trust fund.

Recess

The meeting recessed at 4:54 p.m.
The meeting resumed at 5:34 p.m.

Discussion of Solid Waste Fund Deficit

Public Service Director Sue Foune delivered a presentation on the deficit in the Solid Waste Fund and the proposed increase of the Solid Waste Millage.

City Manager Ritsema stated the options for making the Solid Waste Fund whole were to raise the millage, cut solid waste programs, or shift costs to the General Fund. City Manager Ritsema stated he was recommending the millage increase.

In response to questions from Commissioners Urban and Milcarek, Director Foune confirmed the code compliance revenue was from fines for nuisance violations. Director Foune noted this revenue went into the General Fund, even though the expenses for enforcement activities like trash pick-up were realized out of the Solid Waste Fund.

In response to a question from Commissioner Anderson, Director Foune stated the millage could be adjusted up or down, on a year-by-year basis, upon the approval of the City Commission.

Discussion of Solid Waste Fund Deficit (cont'd)

Discussion followed regarding the merits of the various options for funding solid waste programs and the timing of these options relative to the timing of solutions to the City's larger structural budget issues. Commissioners offered the following ideas:

- eliminate low priority programs, like Christmas Tree removal, and increase the millage; then gauge public response. (Commissioner Urban)
- increase the millage as recommended by the City Manager. (Vice Mayor Cooney and Commissioner Sykes)
- keep solid waste activities funded out of the Solid Waste Fund, not the General Fund. (Commissioner Urban)
- shift General Fund code enforcement revenue for solid waste activities to the Solid Waste Fund.
- reduce the General Fund balance to fill the budget gap in the Solid Waste Fund. (Mayor Hopewell)
- shift code enforcement revenue from the General Fund to the Solid Waste Fund and increase the Solid Waste Millage to 1.85 mills. (Commissioner Urban)
- reduce the frequency of curbside recycling from weekly to bi-weekly. (Mayor Hopewell)
- reduce the frequency of bulk trash pick-up from monthly to quarterly. (Commissioner Knott)

Commissioners asked about the estimated costs for single stream recycling, bi-weekly recycling, and quarterly bulk trash pick-up.

Director Foune reported a Request for Proposal (RFP) for solid waste services had been released, and the bid opening was scheduled for December 21st. Director Foune stated the RFP requested pricing on single stream recycling, bi-weekly recycling, and quarterly bulk trash pick-up as alternate proposals.

City Manager Ritsema indicated staff would be able to inform the Commission of the results of the bid opening and the alternative pricing at the budget public hearing on December 21st.

Mayor Hopewell questioned whether there was another budget work session planned and if departments would be presenting their budgets.

By consensus, the City Commission requested a special work session to hear departments directors present their budgets.

Presentation of CIP Budget and Review of Priority Based Budgeting

Deputy City Manager Jeff Chamberlain presented the Capital Improvement Projects budget (including Major Street projects), and reviewed Priority Based Budgeting (PBB).

Responding to a question from Vice Mayor Cooney, Deputy City Manager Chamberlain explained there were three components to the proposed Bronson Park improvements: education; general park use; and restoration of fountain complex.

Presentation of CIP Budget and Review of Priority Based Budgeting (cont'd)

In response to a question from Commissioner Sykes, Deputy City Manager Chamberlain stated the funds for the new roundabout were not coming from the Local Streets Fund.

City Manager Ritsema reviewed the efficiency recommendations from the Support Services Group and plans for using PBB in 2017 and beyond.

In response to a question from Commissioner Anderson, Director Skrobola stated the proposed budget for Metro Transit was a full year budget, and he explained the Metro Transit budget was separated out as a component unit budget at the recommendation of the City's external auditors.

Mayor Hopewell urged Commissioners to fill out and return their board/commission/committee preferences matrix to the City Clerk.

Commissioner Anderson noted he was on the Board of Directors for the Prisoner Re-Entry Program and requested that this board be added to the list of non-City boards.

Citizen Comments

Next, an opportunity was given for general citizen comments.

> Richard Stewart, City resident, stated there was a large spike in spending in 2014, especially in the City Manager's Office and Community Planning and Development Department. Mr. Stewart urged new Commissioners to look at the 2014 budget. Mr. Stewart asked why "Building a Strong, Well Planned Community" was a higher priority than "Safe Community" in the PBB Community Results.
>
> Zach Lassiter, City resident, encouraged the Commission to look at reducing expenditures and cutting unnecessary services, not just increasing taxes. Mr. Lassiter stated low income residents were not able to afford tax increases.

Commissioner Comments

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

Adjournment

The meeting adjourned at 6:57 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on January 4, 2016

Approved by: ______________________________
Bobby J. Hopewell, Mayor
Dated: January 4, 2016

# Commission Agenda Report
City of Kalamazoo

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

**FROM:** Scott A. Borling, City Clerk

**DATE:** 12/23/2015

**SUBJECT:** Report of Determination from the Local Officers Compensation Commission (LOCC)

**INFORMATIONAL ITEMS**

The Local Officers Compensation Commission (LOCC), a group established by City ordinance under state enabling legislation, is required to meet in odd numbered years to consider and determine compensation levels for the City's elected officials. On Thursday, December 17, 2015 the LOCC met and approved a 1.03% salary increase for the Mayor, Vice Mayor, and City Commissioners. In dollars, the increases for these positions are $100, $84, and $74 **per year**, respectively. (The sum total of the increases is $554 per year.) The new salaries will take effect automatically on January 16th unless the City Commission, by a 2/3 vote, adopts a resolution rejecting this salary determination.

**ATTACHMENTS:**

| Type | Description |
|---|---|
| Report | 2015 Report of Determination from the Local Officers Compensation Commission |

City of Kalamazoo

# Local Officers' Compensation Commission

## Report of Determination

December, 2015

The Local Officers' Compensation Commission (LOCC) has determined that the compensation for the Mayor, Vice Mayor, and City Commissioners of the City of Kalamazoo shall be increased to the following levels: Mayor—$9,790 per year; Vice Mayor—$8,244 per year; and City Commissioners—$7,214 per year.

In making this determination, the LOCC took into account four factors:

- the philosophical basis for the compensation of elected officials in Kalamazoo
- the cost of living since the end of 2013, when current compensation levels were established
- the current state of the economy and the City's short and mid-term fiscal challenges
- the level of compensation for elected officials in the City of Kalamazoo as compared to other cities in Michigan

First, the LOCC reaffirmed its position on the philosophical basis for compensating elected officials in the City of Kalamazoo. The LOCC views the compensation for Kalamazoo officials as a stipend or a gratuity designed to defray the expense associated with the responsibilities of being an elected official.

Second, the LOCC considered Consumer Price Index (CPI) data from the U.S. Department of Labor for the Midwest Region. Despite the City's current fiscal challenges, the LOCC is concerned about the potential necessity for large salary increases in the future to restore the purchasing power of elected official's salaries due to the erosion of those salaries by inflation. The summary *Kalamazoo City Commission Compensation Rates November 2013— November 2015 Compared to CPI* is included in this report by reference.

Third, the current levels of compensation for elected officials in Kalamazoo are relatively comparable to the compensation for elected officials in other Michigan cities of similar size. The chart *Compensation Rates for Various Michigan Municipalities, December, 2015* is included in this report by reference.

In closing, it is the unanimous opinion of the LOCC that the dedication and service of the Mayor, Vice Mayor, and City Commissioners of the City of Kalamazoo are highly valued and greatly appreciated. The LOCC's determination is based on the fact the LOCC has only offered the City's elected officials a salary increase twice since 2005, and those officials have only accepted an increase once during that same time.

Attachments

*Kalamazoo City Commission Compensation Rates 2013-2015 Compared to CPI*
*Compensation Rates for Various Michigan Municipalities, December 2015*

# Compensation Rates for Various Michigan Municipalities, December 2015

| CITY | POPULATION | MAYOR | VICE MAYOR/MAYOR PRO TEM/PRESIDENT | COMMISSIONER |
|---|---|---|---|---|
| **Ann Arbor**<br>734-794-6140 | 117,025 | $42,436.00 Part-time | $15,913.50 Part-time | $15,913.50 Part-time |
| **Battle Creek**<br>269-966-3348 | 52,347 | $7,800.00 Part-time<br>($200/mtg. + $250/mo) | $5,700.00 Part-time<br>($200/mtg. + $75.00/mo.) | $4,800.00 Part-time<br>($200.00/mtg.) |
| **Jackson**<br>517-768-6366 | 33,534 | $11,750.00 Part-time | $7,850.00 Part-time | $7,850.00 Part-time |
| **Grand Rapids**<br>616-456-3010 | 192,294 | $39,924.00 Part-time | Comptroller (elected postion)<br>$54,264.00 Part-time | $22,946.00 Part-time |
| **Holland**<br>616-355-1301 | 33,481 | $12,000.00 Part-time | None | $6,000.00 Part-time |
| **Kalamazoo**<br>269-337-8792 | 75,092 | $9,690.00 Part-time | $8,160.00 Part-time | $7,140.00 Part-time |
| **Lansing**<br>517-483-4130 | 113,972 | $158,400.00 Full-time COO<br>+car+health insurance | $26,640.00 Pres. Part-time | $25,140.00 V.P. Part-time<br>$24,240.00 Comm. Part-time |
| **Portage**<br>269-329-4511 | 46,292 | $7,500.00 Part-time | $5,000.00 Part-time | $5,000.00 Part-time |
| **East Lansing**<br>517-319-6883 | 48,579 | $9,260.00 Part-time | $8,011.00 Part-time | $8,011.00 Part-time |
| **Royal Oak**<br>248-246-3050 | 57,236 | $2,100.00 Part-time | $2,100.00 Part-time | $2,100.00 Part-time |
| **Saginaw**<br>989-759-1547 | 50,790 | $2,280.00 Part-time | $1,080.00 Part-time | $1,080.00 Part-time |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **St. Clair Shores** | 59,715 | $10,070.76 | Part-time | $7,934.88 | Part-time | $7,934.88 | Part-time |
| 586-447-3306 | | | | | | | |
| **Southfield** | 78,000 | $46,900.00 | Full-time | $18,000.00 | Council President | $17,000.00 | Part-time |
| 248-796-5150 | | | | | | | |
| **Troy** | 82,821 | $2,100.00 | Part-time | $2,100.00 | Part-time | $2,100.00 | Part-time |
| 248-524-3316 | | | $175.00 per mo | | $175.00 per mo | | $175.00 per mo |
| **Wyoming** | 72,125 | $13,355.00 | Part-time | $9,994.00 | Part-time | $8,855.00 | Part-time |
| 616-530-7296 | | | | | | | |
| **County Commission** | 254,580 | $15,300.00 | Chairman Part-time | $13,770.00 | Part-time | $12,240.00 | Part-time |

# Kalamazoo City Commission

## Compensation Rates November 2013 – November 2015
## Compared to CPI

### Current Compensation Rates

**Mayor**

$9,690.00/year

**Vice Mayor**

$8,160.00/year

**City Commissioners**

$7,140.00/year

### Compensation Rates in Light of the CPI[1]
### (what salaries would need to be in December 2015 in order to have the same buying power as in November 2013)

**Mayor**

$9,790.00/year
- difference from current level: $100.00 (1.03%)

**Vice Mayor**

$8,244.00/year
- difference from current level: $84.00 (1.03%)

**City Commissioners**

$7,214.00/year
- difference from current level: $74.00 (1.03%)

[1] This figure is based on the Consumer Price Index for the period November, 2013 and November, 2015.