



Agenda

Regular Meeting of the City Commission

City of Kalamazoo

Monday, December 5, 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. Oath of Office Ceremony for New Public Safety Officers
 - b. Farmers Market Update (Chris Broadbent, Market Manager)
4. Proclamations

C. ADOPTION OF FORMAL AGENDA

D. COMMUNICATIONS

1. Calendar of Upcoming Meetings

E. PUBLIC HEARINGS

1. Public hearing to receive comments on an ORDINANCE rezoning the east 12.78 acres of 4501 Arboretum Parkway from Zone CC to Zone RM-24.
(Action: Motion to adopt the ordinance)

F. CONSENT AGENDA

(Action: Motion to approve Items "1-12" and authorize the City Manager to sign all documents on behalf of the City)

1. Approval of a one-year contract extension with PVS Technologies for the purchase of 200 dry tons of Ferric Chloride in the amount \$121,800.
2. Approval of a 12-month maintenance contract with Hexagon/Intergraph Corporation for the continued maintenance of the City's computer-aided dispatching, records management, and mobile data computing systems in the amount of \$167,300.02.
3. Approval of a contract with Nashville Construction Company for the construction of the Portage Creek Trail in the amount of \$432,551.23.
4. Approval of a one-year term contract for gasoline and diesel fuel with Kalamazoo Oil, Inc. for an amount not to exceed \$591,107.

5. First reading of an ordinance to amend certain sections of Chapter 38 of the Kalamazoo code to change the rates charged for water service. The ordinance amends Chapter 38 of the Kalamazoo Code of Ordinances to increase water service revenues by 8.0% across the board, effective January 1, 2017.
6. Adoption of a RESOLUTION approving six new Neighborhood Enterprise Zone (NEZ) Certificates in the Vine Neighborhood, transferring two previously-approved NEZ Certificates, and revoking one previously-approved NEZ Certificate.
7. Adoption of a RESOLUTION authorizing the issuance of Tax Anticipation Notes for fiscal year 2017 in the amount of \$3,000,000.
8. Adoption of RESOLUTION from the Michigan Department of Licensing and Regulatory Affairs, Liquor Control Commission recommending approval of a Small Wine Maker License for Gonzo's Bigg Dogg Brewing Co. located at 140 South Westnedge Avenue.
9. Adoption of a RESOLUTION setting the schedule of regular City Commission meetings for the 2017 calendar year.
10. Authorization for the Mayor and City Manager to execute a one-year lease for Bronson Park with Kalamazoo County.
11. Approval of an Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement.
12. Approval of the appointment of **Christopher Flach** to the Zoning Board of Appeals as Alternate Member #2 for a term expiring on March 31, 2017.

G. REGULAR AGENDA

H. REPORTS AND LEGISLATION

1. City Manager's Report

I. UNFINISHED BUSINESS

J. POLICY ITEMS

K. NEW BUSINESS

L. CITIZEN COMMENTS

M. MISCELLANEOUS COMMENTS AND CONCERNS BY COMMISSIONERS

N. CLOSED SESSION

O. ADJOURNMENT

ADDITIONAL INFORMATION

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

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



Commission Agenda Report

City of Kalamazoo

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

FROM: Scott A. Borling, City Clerk

PREPARED BY: Shelby Moss, Deputy City Clerk

DATE: 10/25/2016

SUBJECT: Calendar of Upcoming Meetings

INFORMATIONAL ITEMS

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

ATTACHMENTS:

	Type	Description
▣	Meeting Schedule	20161205 Calendar of Meetings



Calendar of Upcoming Meetings

City of Kalamazoo

City Commission (next 30 days)

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

December 19th

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

To Be Announced

Regular Work Sessions

To Be Announced

Advisory Boards, Commissions and Committees (next two weeks)

The **Parks and Recreation Advisory Board** will meet on Tuesday, December 6, 2016 at 5:20 p.m., in the Parks and Recreation Community Room at Mayors' Riverfront Park, located at 251 Mills Street.

The **Traffic Board** will meet on Thursday, December 8, 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, December 8, 2016 at 6:30 p.m., in the Community Room at City Hall.

The **Zoning Board of Appeals** will meet on Thursday, December 8, 2016 at 7:00 p.m., in the City Commission Chambers at City Hall.

The **Kalamazoo Historic Preservation Commission** will meet on Tuesday, December 13, 2016 at 7:00 p.m., in the Community Room at City Hall.

The **Economic Development Corporation** will meet on Thursday, December 15, 2016 at 7:30 a.m., in the Community Room at City Hall. The **Brownfield Redevelopment Authority** will meet immediately following.

The **Building Board of Appeals** will meet on Thursday, December 15, 2016 at 2:00 p.m., in the Commission Chambers at City Hall.

The **Kalamazoo Municipal Golf Association** will meet on Thursday, December 15, 2016 at 5:30 p.m., in the clubhouse at Milham Park Golf Course, located at 4200 Lovers Lane.

The **Downtown Development Authority** will meet on Monday, December 19, 2016 at 3:00 p.m., in the Community Room at City Hall.



Commission Agenda Report

City of Kalamazoo

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

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

REVIEWED BY: Laura Lam, Director

PREPARED BY: Rob Bauckham, Senior Development Planner

DATE: 11/23/2016

SUBJECT: Rezone a Portion of 4501 Arboretum Parkway

RECOMMENDATION

It is recommended that the City Commission adopt an ordinance to rezone the east 12.78 acres of 4501 Arboretum Parkway from Zone CC (Commercial, Community District) to Zone RM-24 (Residential, Multi-Dwelling District).

BACKGROUND

The parcel for this rezoning request is located in the Arcadia Neighborhood and is vacant and undeveloped. The land is located in the Arboretum development area between S. Drake Road and Solon Avenue and is owned by the WMU Foundation. In 2006, the west thirty acres of the Arboretum property, including the subject parcel, was rezoned from the RS-5 (Residential, Single-Dwelling District) to the current CC (Community Commercial District). That rezoning request originated from the WMU Foundation to promote future commercial development on the property frontage along S. Drake Road. Only two parcels within the 30 acre area have been developed for commercial uses. The current request is to rezone the subject parcel to the RM-24 zone (Multi-Family District) with the exception of the west two acres that front on S. Drake Road. That two-acre segment would remain in the current CC zone for future commercial development. The applicant would like to have the parcel rezoned to allow a new apartment complex to be constructed.

The rezoning is consistent with the recommendations of the Westside Area Plan developed in 2003. The Plan shows the parcel to be in the High Density Residential and General Commercial categories. The Planning staff supports the change that will result in an appropriate use of the land and will benefit the tax roll. Existing apartment complexes are located to the north (Drake's Pond Apartments) and to the south (Dover Hills Apartments), and the Walden Woods condominiums are located to the east. The Arcadia neighborhood would be buffered from the proposed apartment complex by the Calvary Bible Church and property, and the Kalamazoo Community Soccer Complex.

The WMU Foundation was approached by the American Kendall Property Group to develop a new 241-unit apartment complex on the subject parcel. American Kendall is the applicant for this request. Current zoning would not allow the proposed use in the CC zoning district unless the buildings contain office and/or commercial uses on the first floor. The applicant does not want to build these uses in the proposed apartment complex. The applicant conducted a marketing study, which suggested multi-family housing demand in the area. The rezoning of the parcel to the multiple-family zone is necessary

to allow the project to move forward.

The Arcadia Neighborhood Association was informed of the proposed rezoning and new apartment complex. A concept plan for the apartment complex has been attached to this report. It shows the proposed layout of the apartment buildings, parking, clubhouse, park area, and outdoor pool.

COMMUNITY RESOURCES CONSULTED

Notice of the public hearing on the rezoning request before the Planning Commission was mailed to all property owners and occupants located within 300 feet of the subject property, and it was published in the Kalamazoo Gazette. The notice was also provided to the Arcadia Neighborhood Association. This same process was conducted for the public hearing to be held on the request by the City Commission.

The Planning Commission recommended to the City Commission to approve the rezoning request by a vote of 4 to 2 at their October 6, 2016 meeting.

The following comments were provided at the Planning Commission's public hearing. Responses to the comments from staff are provided in italics.

1. Concern that the project will bring more traffic to the area and neighborhood. *The Arboretum property has been planned for development since the first PUD plan was approved in the late 1990s with a proposal for a new apartment complex. The Westside Area Plan approved in 2003 further defined the future development of the land area. Drake Road has sufficient capacity to accommodate the additional traffic from the proposed project and other future development in the area. There are no direct vehicular connections to the Arcadia neighborhood from the subject property or from Arboretum Parkway. Since there are no such connections, the new apartment complex will not directly add any traffic volume within the neighborhood.*
2. There will not be adequate emergency services coverage for the proposed complex. *The complex will be served by the Kalamazoo Public Safety Sub-Station on Parkview Avenue with back-up assistance from the Kalamazoo Township Fire Station on Nichols Road and the Oshtemo Township Fire Station on W. Main Street.*
3. The request amounts to spot zoning and is illegal. *The subject property contains over 12 acres of land, and would not constitute spot zoning by law as the property directly to the south is also currently zoned for multiple-family uses.*
4. Commercial development will eventually come to the site with the current zone. *The property was zoned commercially in 2006 to attract new commercial uses. In the last ten years, one bank and a commercial day care facility have located on the overall property, which encompasses only about 10% of the commercially zoned land area. The remaining 2 acres of property along Drake Road will remain available for commercial development.*
5. Plenty of apartment units exist in the area already. *The applicant conducted a marketing study which determined that sufficient demand exists for additional apartment units in this area.*
6. Concern was expressed that the current sanitary sewer and water facilities will not be able to accommodate the proposed complex. *The utilities and infrastructure, including stormwater retention, were created when Arboretum Parkway was designed and built. All future development was considered at that time for the highest possible use of the parcels.*
7. It was suggested that additional soccer fields be built on the property instead of the apartment complex. *The applicant has an option to purchase the property from the WMU Foundation for the apartment complex. No other party has formally approached the Foundation to purchase the land for a different use.*

8. Arboretum Parkway is a speedway and will not be able to handle the additional traffic. *The road was designed to accommodate much more additional traffic volume than the present levels. The Parkway may be studied for additional traffic calming elements particularly around the school zone.*

9. The project will result in the loss of green space in this area. *If the rezoning is approved and the apartment complex is constructed, at least one-half of the property will be required to remain in green space. Under the current commercial zone, a retail or office development would only be required to have 20% of the property in green space. The WMU Foundation agreed to maintain at least 40 acres of open space throughout the Arboretum complex. The majority of this open space is located at the northeast portion of the complex within the "Basswoods" area. The area to the north of Arboretum Parkway on the west end also constitutes a portion of the open space as it accommodates the majority of the storm water for the area. A large wooded buffer area is also located directly west of the neighborhood that will be preserved. Each of the developed parcels in the complex has also been required to maintain a certain amount of open space.*

10. The proposed apartment complex will encroach into the Arcadia neighborhood. *The proposed apartment complex would be over 1,600 feet (over a quarter mile) from the closest residential lot in the Arcadia neighborhood. The Calvary Bible Church, Kalamazoo Community Soccer Complex, and several existing apartment complexes currently buffer the neighborhood from the subject property.*

The Planning staff also attending a meeting of the Arcadia Neighborhood Association on October 26, 2016, to further discuss the request. Many of the same concerns offered during the public hearing were also provided at the Arcadia meeting. Additional concerns, with staff response in italics, are identified below:

1. This could be a student complex. *Although students could live in the complex, the applicant is not planning to specifically market to them. Students have many other housing options that are closer to the school.*

2. There should be no direct vehicular connection between the apartment complex and the Arcadia neighborhood, or between Arboretum Parkway and the neighborhood. *These connections do not currently exist and are not planned as part of this development.*

3. Multiple-family development has more negative impact on an area than commercial development. *In comparing a large apartment complex with a large commercial development, staff disagrees. The latter use could include 24 hour shopping, parking lot lighting, semi-truck traffic with diesel engine noise and exhaust, and back-up noise issues. Outside lighting and traffic volumes are typically greater with a commercial development than with an apartment complex. A large restaurant or bar could have late hours, create more traffic, and include outdoor customer areas with entertainment venues. An outdoor sports stadium could also locate on the parcel in the current zone. The plan from 2003 suggested a "tapering down" of development as it got closer to the neighborhood and the rezoning is following that plan.*

4. A traffic study and site plan review process should be conducted prior to the rezoning. *The 2003 West Side Plan anticipated this type of development when the road was designed. Accommodations for sidewalk connectivity and traffic calming will be looked at during site plan review. If the rezoning is approved, a traffic study would be required as part of the site plan review process for the apartment complex.*

FISCAL IMPACT

The rezoning will not cost the city beyond planning staff time that falls under normal department operating expenses. If the rezoning is approved and the apartment complex constructed, the parcel will be added to the city tax rolls. The final assessed value of the apartment complex is not yet known. If the value is calculated at \$1.0 million for example, approximately \$20,000 in property tax revenue would be added to the city tax rolls annually. The project will also provide significant building permit and site plan review fees for the city.

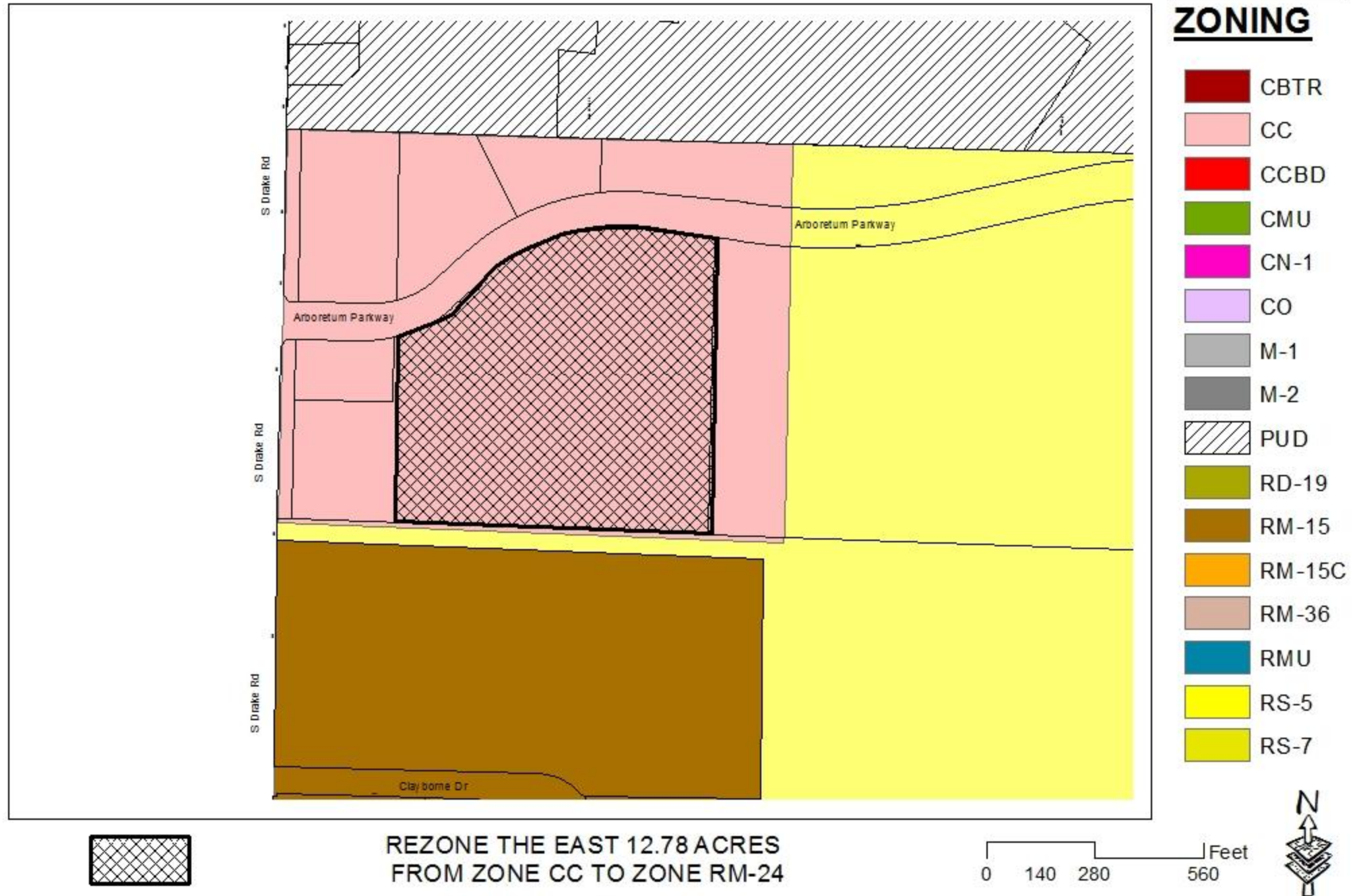
ALTERNATIVES

The City Commission has the option of not approving the rezoning request. It is recommended that the rezoning request be approved. If the City Commission denies the request, valid and specific reasons should be stated for the record.

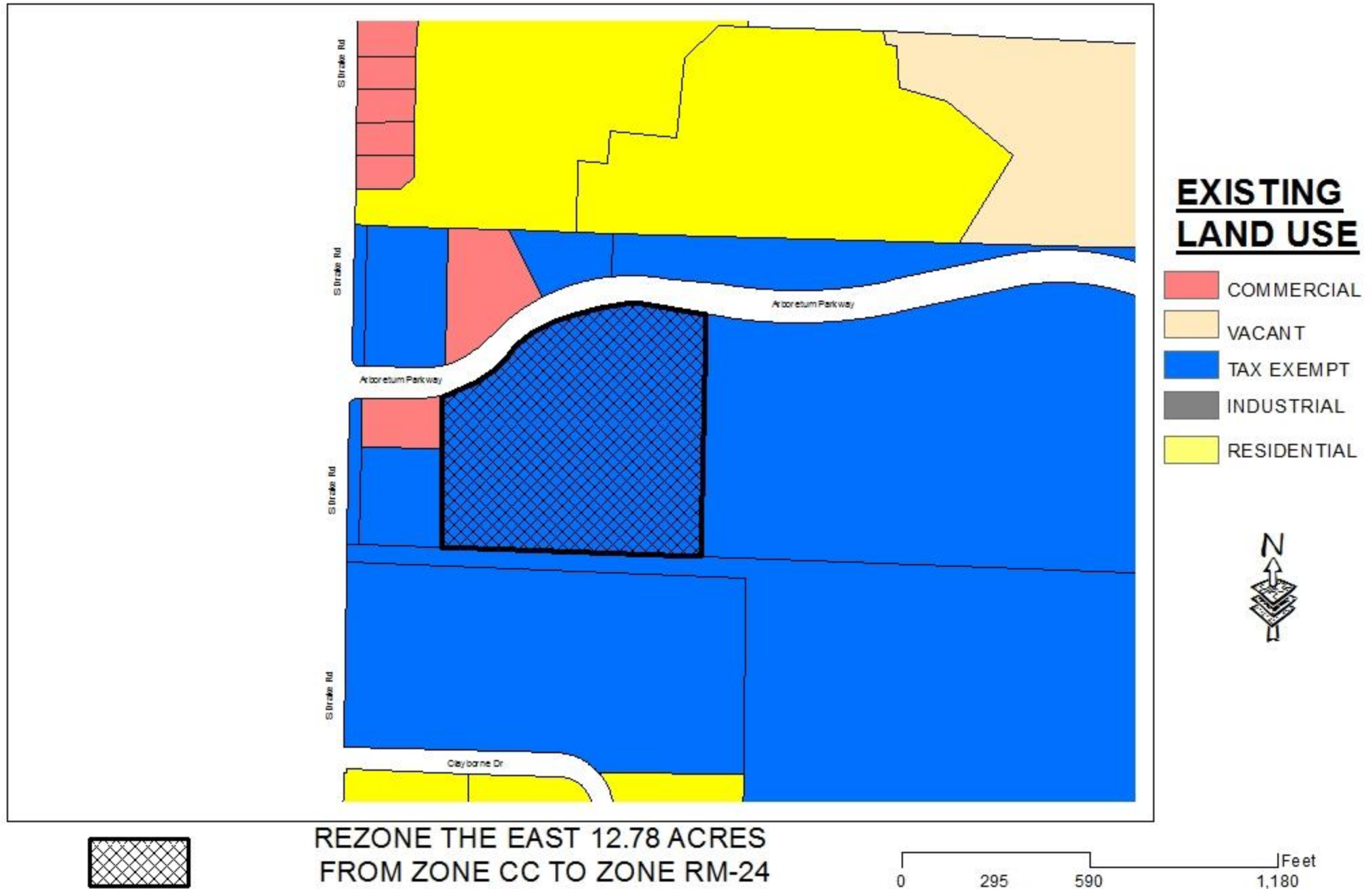
ATTACHMENTS:

Type	Description
Map – Existing Zoning	Existing zoning map
Map - Existing Land Use	Existing land use map
Aerial Photo	Aerial photo
Concept Plan	Concept plan
Map – Future Land Use	Future land use plan
Minutes	PC minutes
Map – Proposed Zoning	Proposed rezoning map

P. C. #2016.13 - 4501 Arboretum Parkway
Rezone the east 12.78 acres of 4501 Arboretum Parkway
from Zone CC to Zone RM-24.



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REZONE THE EAST 12.78 ACRES
FROM ZONE CC TO ZONE RM-24

0 255 510 1,020 Feet





Arboretum Parkway Illustrative Site Plan

American Kendall Property Group
Scale 1:100

06/20/16

Data:

D.U.	241
Garage Parking	127
Street Parking	69
Parking Lot	286
Parking Ratio	2:1

Unit Mix:

3 Bedrm. / 2 bath	26 d.u.	11%
2 Bedrm. / 2 Bath	86 d.u.	36%
2 Bedrm. / 1 Bath	44 d.u.	18%
1 Bedrm. / 1 Bath	85 d.u.	35%

P. C. #2016.13 - 4501 Arboretum Parkway
Rezone the east 12.78 acres of 4501 Arboretum Parkway
from Zone CC to Zone RM-24.



- Future Land Use
Type of Use**
- Central Business District
 - Community Commercial
 - Core Residential 1
 - Core Residential 2
 - Employment Centers
 - Greenspace
 - Institutional
 - Mixed-Use
 - Modern Residential 3
 - Modern Residential 4
 - Multiple-Family
 - Neighborhood Commercial
 - Railroad Right of Way



0 305 610 1,220 Feet



REZONE THE EAST 12.78 ACRES
FROM ZONE CC TO ZONE RM-24

City of Kalamazoo
PLANNING COMMISSION
Minutes
October 6, 2016
DRAFT

Second Floor, City Hall
Community Room
241W. South Street, Kalamazoo, MI 49007

Members Present: Rachel Hughes-Nilsson, Chair; Charley Coss, Vice-Chair; Joshua Cook, Geoffrey Cripe, Gregory Milliken, Derek Wissner

Members Excused: Emily Greenman Wright, Tracy Hall

City Staff: Rob Bauckham, Senior Development Planner; Wendee Mayes, Recording Secretary

Guests: None

A. CALL TO ORDER

Commissioner Hughes-Nilsson called the meeting to order at 7:01 p.m.

B. ROLL CALL

Planner Kik proceeded with roll call and determined that the aforementioned members were present.

C. ADOPTION OF FORMAL AGENDA

Commissioner Hughes-Nilsson suggested moving the third public hearing to be first on the agenda as it is a shorter request.

Commissioner Wissner, supported by Commissioner Cook, moved approval of the October 6, 2016 Planning Commission agenda as amended. With a voice vote, the motion carried unanimously.

D. APPROVAL OF MINUTES

Commissioner Milliken, supported by Commissioner Wissner, moved approval of the September 1, 2016 Planning Commission minutes as presented. With a voice vote, the motion carried unanimously.

E. COMMUNICATIONS AND ANNOUNCEMENTS

Planner Kik invited everyone to join the Kalamazoo River Valley Trail (KRVT) connector groundbreaking that will be happening tomorrow, October 7th at 4:30pm at the Arcadia Festival Site.

F. PUBLIC HEARINGS

P.C. #2016.14: Request for a special use permit to allow an entertainment/recreational use in a portion of the existing building at 505 E. Kalamazoo Avenue. [Recommendation: motion to approve the request with one condition.]

Planner Bauckham presented the staff report. This request is for a site downtown on Kalamazoo Avenue near Walbridge. The building is divided into sections and is partially occupied. The Final Clue is a new business that would like to open three gaming rooms, offices and a lobby into one section. Customers are typically placed in a room and provided with clues as to the location of a hidden key or other item that when found allows them to either exit the room or end the game. The games are timed and the participant wins when they find the key/item before the time expires. They plan to be open Wednesday through Sunday from 3:00pm to midnight. There will be up to 8 customers per room. There are 14 parking spaces on the site for all the uses and is in the parking exempt district, meaning that on-site parking is not required. This property is in the Commercial Mixed Use zone and entertainment/recreational use is only allowed by special use permit.

Commissioner Milliken questioned what part of the building the applicant would be occupying. Planner Bauckham replied that it will be the southern portion and then going up into the larger portion of the building just north of the southern portion. Most of the existing tenants are in the western portion of the building. Commissioner Wissner inquired as to if alcohol will be served. Planner Bauckham answered that there is nothing in the request pertaining to alcohol or any other food or refreshments.

Joel Fluty spoke as applicant for the request. Mr. Fluty states that it will be a great addition to the downtown area. There will be a lot of foot traffic with the location being between Arcadia Ale and Bells Brewery as well as the Hopcat opening across the street. The nature of the business will bring additional tourists to the area, as people are looking for something new to do.

Jeff Messer spoke in support of the application. Mr. Messer also added that the applicant has already violated two ordinances for this business. A stop work order was issued. Also the applicant advertised with signs placed in the Right of Way which is not approved. Mr. Messer requested that a condition be added to the permit stating that the applicant obey all city ordinances at all times. Mr. Messer is especially concerned with advertising being placed in the Right of Way, on trees, street poles as well as on private property, such as flyers on cars, without permission.

Ruth Broadhurst who was representing the Nephrology Center spoke of concerns with parking. The Nephrology Center operates Monday through Friday from approximately 5:00am to 7:00pm. They are having problems with their parking lot being used by other nearby businesses, such as the Hopcat. This leads to a concern about another business opening that does not already have sufficient parking.

Commissioner Cook would like to see detailed information about parking in the packet.

Commissioner Coss asked if the signs are an enforcement issue or if it can be applied to the Special Use Permit. Planner Bauckham stated that it is an enforcement issue and that he would like to believe that the applicant will follow the ordinances now that he is aware of them. When the applicant was contacted

about the violations he did stop. City Staff monitors code compliance and citizens are encouraged to call with complaints on code violations. Commissioner Wissner is empathetic to the concerns regarding the gorilla style marketing and would like the input of City Attorney Kneas as to putting conditions on the Special Use Permit. Attorney Kneas answered that the requested condition on sign placement cannot be included on the Special Use Permit because it is not referring to placing signs on the parcel for which the permit is being granted. Only conditions on the parcel in question can have conditions applied to it.

Commissioner Coss asked if the parking concerns can be addressed by City Staff in future planning. Planner Kik stated that Downtown Kalamazoo Inc. (DKI) and several downtown businesses in the east area of downtown are in discussions with the City in regards to the parking pressures. They are working on the added parking concerns to the area with the development that is ongoing. Also looking at pedestrian traffic, such as crossing Kalamazoo Avenue, long term solutions.

Commissioner Milliken, supported by Commissioner Cook, moved to approve P.C. #2016.14: Request for a special use permit to allow an entertainment/recreational use in a portion of the existing building at 505 E. Kalamazoo Avenue. [Recommendation: motion to approve the request with one condition.] With a roll call vote, the motion carried unanimously.

P.C. #2016.12: Request to rezone 59 parcels located between S. Pitcher Street and Mills Street, and between E. Michigan Avenue and Gibson Street from Zone M-1, M-2, and CCBD to Zone CMU, and to amend the Riverfront Overlay Zoning District with the new Subarea 9 and apply it to the parcels. [Recommendation: motion to recommend to the City Commission to approve the rezoning request and Riverfront Overlay amendment request.]

Planner Bauckham presented the staff report. This request was initiated by Community Planning and Development staff to rezone 59 separate parcels located on the east side of downtown, specifically between S. Pitcher Street and Mills Street, and between E. Michigan Avenue and Gibson Street. Currently it is primarily Zone M-1 and M-2 with one parcel in Zone CCBD. The request is to zone all these parcels to Zone CMU as well as including an amendment to the Riverfront Overlay District with a new Subarea 9 which would apply to the subject parcels. Downtown is an expanding situation with very low occupancy rate of 2% in residential units. Many of the buildings are renovated and in use. Developers are looking for new opportunities of both commercial and residential uses in the downtown area. This area has been zoned industrial for a very long time. More office and mixed use development is occurring in this area at this time, such as 600 E. Michigan Avenue currently being renovated for office use. Zone CMU allows a variety of commercial and residential uses, such as apartments, churches, schools, restaurants, brewpubs, grocery stores, offices and retail stores. No new industrial uses would be allowed; however, the current industrial uses would be allowed to remain and expand. Subarea of 9 of the Riverfront Overlay would complement this area by creating an additional layer which would promote mixed uses in buildings, and new buildings would be at least two stories in height, constructed close to the front property lines, and have parking located in the rear or side of the lot. New buildings would need to include attractive facades containing durable materials and window space, and have front entrances facing the streets. A goal of the subarea would be to encourage a pedestrian-friendly environment.

A meeting was held on August 25th by the Planning staff to discuss the proposed rezoning and new subarea. All property owners and occupants within the proposed rezoning area were invited to the meeting. Concerns were raised concerning the idea that the city is trying to push existing industry out of Kalamazoo with this rezoning. As well as concerns that existing industry will only be able to expand with a special use permit from the Planning Commission. In response, the city is not trying to push existing industry out of Kalamazoo. The existing industry in this area would be considered a conforming

use in the new zone and subarea and could remain indefinitely. Staff is also proposing that the existing industry in the rezoning area be allowed to expand on its existing land without a special use permit. Staff site plan and building plan review and approval would still be needed for such projects.

Commissioner Cripe asked if there are any implications on future qualifications for TIF (Tax Increment Financing) because of rezoning the CCBBD parcel. Planner Bauckham does not believe this will affect TIF because it is a separate boundary with a comparable boundary with CMU.

Mr. Greg Arvanigian spoke as CEO of Arvco Containers, a property owner within the rezoning boundary. Mr. Arvanigian spoke of Arvco Containers owning about 55 acres of the property under consideration. The property was bought as a manufacturing zone and Arvco Containers expects the area to stay a manufacturing zone. Mr. Arvanigian believes that the intention of this rezoning is to move Arvco Containers out of the city. He expects to be able to expand without getting a variance and does not want the city to rezone his property. He attended the meeting held on August 25th and the assurances that were given did not come through.

Mr. Larry Bell owns three parcels in this district. He did not know about the overlay until he read about it in MLive today. Mr. Bell's concerns are that some of the regulations will be at cross purposes for his property. He does not believe that it makes sense to build on King's Highway and have parking on Portage Creek. His plans are to do the exact opposite. The noise difference between the front and back of the property is substantial. There are also concerns with the buildings having to be two stories high. Some designs he is looking at are only one story. The last concern Mr. Bell has is not being able to have a fast food drive thru and what exactly that will entail. For instance, would that include a coffee shop. Mr. Bell did state that he believes the overlay has good intentions; however he is not sure that they are right for the area.

Mr. Fritz Brown is a local real estate developer, Treystar. He is working on the foundry project at 600 E Michigan Ave. Gives support to the overlay and zoning. Believes the City has reached out to the property owners and explaining the intentions. No plan is perfect and there are concerns but in general it is a well thought out plan.

Mr. Sean Smith owns a building on Gibson St. It is currently zoned industrial and bought building for the privilege of being on the train tracks. People have taken interest in the building because of the same train tracks. Appreciates the city outlook for the future; however they might want to take a closer look at where the train tracks are for things such as import/export businesses.

Mr. Andy Wenzel representing Plaza Corp. They are proud of the Hopcat opening this past weekend. They are entrenched and love downtown Kalamazoo. They recently purchased one of the buildings within the boundaries and just signed a lease for automotive repairs. The building is currently under renovations for this new business. They did not receive the invitation to the August 25th meeting. After they heard about the proposal there was a meeting with city staff to address their concerns. They were told that existing businesses would be able to remain. The concern is what if another use is proposed for the property that is a complimentary use to the business already in the budding. Will they need a special use permit to allow the new business into the building. This is on the edge of the rezoning and Plaza Corp would rather be left out of the rezoning. Removing their parcel from the rezoning would not interrupt the grand plan.

Commissioner Hughes-Nilsson requested that Planner Bauckham address the question from Mr. Arvanigian about existing industry being allowed to stay as long as they want. Planner Bauckham responded that existing industry will be considered conforming uses and will be allowed to stay as long as

they want with the stipulation that they can expand on their current property without a special use permit. The only approval they would need would be site plan review.

Commissioner Coss commented that it seems a lot of stakeholders have different needs. It does not seem that no one is on the same page. Maybe this needs some rethinking, more discussion with owners and bring it back to the commission. Planner Kik suggested that the proposal could be tabled with directions to staff to submit data with a new request. Could meet with owners to rework the request before bringing it back to the commission.

Commissioner Milliken added that tabling the proposal means that the city staff will have a chance to hear more from the property owners about what they want. The staff can then either change the zoning request to better suit the property owners or they can give commissioners more feedback on why the proposed zoning should forward. Commissioner Milliken also talked about the extreme changes he has seen happening downtown. No changes industrially in this area for a decade or more. There are extreme mixed use changes in downtown. From a rezoning stand point we are on pretty solid ground. From a zoning position, the existing industrial uses can stay until they no longer stay and opportunities are being found for new uses. May need more evaluation in the subarea and the regulations it contains. What are some of the reasons behind the restrictions, such as two story buildings. Is coffee considered a drive thru. Commissioner Cook agrees that there were too many questions asked by citizen comments that commission could not answer. Commissioner Cook recommends tabling the proposal asking the city staff to reevaluate the proposal taking into account the concerns of the landowners.

Commissioner Coss asked if the Nature Center is involved in the process as well. Planner Kik answered that it is an open space so it is allowed in every single use district.

Commissioner Cripe inquired about the subarea overlays. With Imagine Kalamazoo being involved maybe it is time to look at updating the overlay district from the original 1950s model. He sees conflicts with parts, such as wanting the parking in the back of the building and at the same time wanting to protect our creeks. How can we accommodate design flexibility. Maybe this is something that can be addressed with Imagine Kalamazoo 2025.

Commissioner Cripe also questioned if the timing of the rezoning request is being prompted by a plan or what is the rezoning based on. Planner Kik answered that this is similar to the rezoning for Oakland Dr. Trying to follow the 2010 Master Plan rezoning. This is also removing the barriers for a developer that wants to do something based on the Master Plan and zoning ordinance. City staff is trying to be proactive to rezone an area with the openness of trying to create the new as well as letting the industrial to stay. Developers want flexibility, open space, next to a river (Portage Creek). At the moment the zoning means that there is a laundry list of variances that a developer may encounter when trying to build. A rezoning will make this an easier process for those developers who are trying to bring newer mixed use of properties to this area.

Planner Kik explained that the rezoning and overlay will not affect the current industrial parcels as long as they are not sold. They will be able to continue to expand and develop on their parcels without a special use permit. Only having to go through site plan review as they must do now. When the parcel is sold the CMU zoning and Subarea 9 overlay will then take effect.

Commissioner Coss requested that staff address the particular cases that were brought up in tonight's hearing. Commissioner Wissner added addressing issues brought forward today as well as trying to incorporate some of these issues into the master plan envisioning.

Commissioner Coss, supported by Commissioner Milliken, moved to table P.C. #2016.12 while City Staff takes input from stakeholders and reworks the proposal. With a roll call vote, the motion carried unanimously.

P.C. #2016.13: Request to rezone the east 12.78 acres of 4501 Arboretum Parkway from Zone CC (Commercial, Community District) to Zone RM-24 (Residential, Multiple-Family District). [Recommendation: motion to recommend to the City Commission to approve the rezoning request.]

Planner Bauckham presented the staff report. This is a request by the WMU Foundation to rezone the east 12.78 acres of 4501 Arboretum Parkway from Zone CC (Commercial, Community District) to Zone RM-24 (Residential, Multiple-Family District). This parcel is located in the Arcadia Neighborhood and is currently vacant and undeveloped. In 2006 this parcel was rezoned from RS-5 (Residential, Single-Dwelling District) to the current CC (Commercial, Community District). The approximately two acres that fronts S. Drake Rd will remain in the current CC zone to allow for future commercial development. Since the rezoning a bank and a daycare have been developed. There has been no other commercial development in the past decade. There is interest in developing a new upscale apartment complex on the subject parcel that will contain 241 units, 15 buildings, a playground, a pool, and parking. This is a downzoning of the parcel to a less intensive zone. In the current zoning this use would only be allowed if the buildings contained office and/or commercial uses on the first floor. The proposal does not have such uses, which is the purpose of the request to rezone to RM-24. The current zoning allows auto repair and sales, gas stations, bars, restaurants, fraternities, and outdoor retail which will not be allowed in the new zoning. The Westside Area Plan which was developed in 2003 includes a future land use showing this to be in the General Commercial category. This rezoning represents a change to that Plan. This is supported by the Planning staff as it will leave the S. Drake Rd frontage for commercial development. The project will result in an approximate use of the land and will benefit the tax roll. There are existing apartment complexes to the north and south as well as condominiums to the east. If the rezoning is approved, the future land use plan will be adjusted as part of the current Master Plan update project.

There was an email that came from Arcadia Neighborhood which had some concerns about the proposal including, traffic population density, safety of the children and families in this area (asking if a traffic study has been performed) as well as concern about the green space in this area. This area is currently planned as commercial space. Some of the uses could be a big box store or auto sales and repair stores. The proposal is for an upscale apartment complex instead. The proposed zoning will have to provide for 50% open space instead of the current 20% open space. The commitment to preserve open space is still intact at the southern portion and very eastern portion of the site. There are no proposals that would lead to a traffic connection directly to the Arcadia Neighborhood. If this is approved the development will have to go through site plan process and the city traffic engineer will decide on a traffic study and if there are any necessary changes.

Commissioner Cripe asked if the conceptual plan included the open space. Planner Bauckham answered that the open space is preserved in perpetuity. With this development there will be more open space than if the parcel is developed for more commercial uses. The Walden Woods condominium development has a portion that has been preserved as open space. There is a trail that does connect with the Arcadia Neighborhood. Commissioner Wissner inquired if the project is being developed by the WMU Foundation or if they are selling to developers. Planner Bauckham responded that it would be sold to private developers. Commissioner Milliken looked for clarification that the concept and plan would be presented at a later date and today is only about the rezoning. Planner Bauckham confirmed that this proposal is only about the rezoning. WMU Foundation has been marketing the area for commercial development and has not been successful. They were approached with the idea for this development.

Michael Speedy of Kendall Property Group, LLC spoke. Mr. Speedy stated that WMU Foundation set up a meeting between him and the board members of the Arcadia Neighborhood Association during which time he does not recall any concerns being raised. Mr. Speedy also met with the principals at both Arcadia Elementary and Linden Grove Middle School. WMU Foundation presented concerns to Kendall Property Group, in regards to the property, their responsibility to the community and the underdevelopment of the land. They questioned the design of the complex and stated they did not want it to be developed as student housing. They also wanted the elevations to be attractive from the parkway. The conceptual plan includes required setbacks; there will be multiuse trails throughout, created small pocket parks throughout, the parking areas with garages in the backs of buildings are all in the center, different types of methods of screening for landscaping. Intend to market to people who live and work in Kalamazoo rather than students.

Commissioner Cripe asked if Mr. Speedy was speaking for the foundation. Mr. Speedy clarified that he is speaking on behalf of the developer who has an agreement with the Foundation. Commissioner Cripe looked for clarification as to how the Foundation plans on keeping the requirements for the open space. Mr. Speedy responded that they are using 3 story buildings and creating pocket parks which will actually leave more than the required 50% open space. The design is to make the site pedestrian friendly. Commissioner Wissner asked if it is designed to be rentals or condominiums. Mr. Speedy responded that it is intended to be rentals with residents staying as long as they want.

Ms. Courtney Roberts spoke against the rezoning. Ms. Roberts is concerned with more traffic problems and referenced a current traffic issue on Sundays with the church. She noted that businesses have hours and apartments do not, so the traffic will not have a downtime. There will be additional strain on the sewage and drainage system. The area that will be left as green space is watery and marshy. She does not see how the 3 story buildings are going to be accessible for people with challenges. The pocket parks seem to be a way to divide up the parking spaces. The population density is already difficult. The Arcadia Neighborhood association has already addressed the current traffic problems and that Public Safety is already stretched too thin.

Mr. Rex Brueggemann has a significant issue with the rezoning. Mr. Brueggeman understands that it is considered downsizing however in the context of the area the rezoning needs close scrutiny by the commission. Spot rezoning violates the overall concept of master planning. Commercial development is picking up and the past 10 years does not reflect what will be happening in the future. While Mr. Brueggeman appreciates the foundations concerns with this being a quality development that is not marketed for student housing, he wants to remind the commission that what is proposed now may not be what will happen in the future. What is to keep the marketing away from student housing in 10 or 20 years. In the 2005 land use plan the proposed density was 12-15 units per acre, this proposal is too high.

Ms. Lois Baker states that Arcadia Neighborhood is a secret treasure, a self-contained neighborhood with a school in it. The neighborhood backs up to a 180 acre forest. This land was donated to Western to be left in its natural state in perpetuity. This was not adhered to and we have to accept that fact. The concerns on the infrastructure cost and the high density of traffic between Stadium Drive and West Main Street. Arcadia neighborhood is becoming trapped by the new developments. Upscale can be a very subjective term. Developers may have the best of intentions to make it upscale but cannot restrict who can live in the apartment buildings and could be sold and managed for a different market place in a few years. The real commitment should be to the homeowners not the investors who may or may not live in the city. Commissioner Cripe asked Ms. Baker about her for clarification on the reference to the gift to Western and the donor intent. Ms. Baker stated that Western was able to get around the stipulation of keeping the property in its natural state by selling the land to the WMU Foundation for a dollar. Many of the homeowners had an investment when they bought their homes and were told that the area would be

left in its natural state. It is disappointing to see development where it was expected to stay as green space.

Ms. Lynn Hall McLeod stated that the zoning was established for a reason, for the best planned use for the property being taken into consideration. This is a repeat of 2011 with the WMU Foundation and the developers of Walden Woods. Also when the Arboretum Apartment Complex that backs up to the Arcadia Neighborhood was sold to out of state developers. Ms. McLeod chose to stay in Kalamazoo for the small time community that takes care of its residents. This has happened time and time again, sitting down about the neighborhood and looking at pretty pictures of what they are going to create. The reality never matches the pictures presented. Children walking to Linden Grove and she has had to call the apartment complex to get the sidewalks shoveled so that the kids do not have to walk in the streets. The developers build it and then move on. They do not have to live here and they do not care what happens. The zoning in this area was embraced by the neighborhood and does not believe it should be changed for developers.

Mr. Chris Adrian is president of the Kalamazoo Community Soccer Complex. Also worried about traffic. Mr. Adrian grew up in Arcadia Neighborhood and as an adult has seen the change especially in the traffic. He is asking for the commission to advocate for the citizens instead of the foundation and developers. Mr. Adrian presented the solution of the WMU Foundation donating this as another soccer complex. Or the Foundation and the City could team up to put a stadium or a park there.

Ms. Namita Sharma has seen what high density housing has done for Ann Arbor and does not want to see the same in Kalamazoo. There are already developments to both the north and south of the proposed site. Arboretum Parkway has become a speedway. This is important for people who walk along the pathway and children walking to Linden Grove. The development describes more green space but this is for the residents of the complex. This is not an advantage for the West Side Plan. The loss of the open space will be a tragedy. Once it is gone it is gone. The apartment complex could still turn into student housing because there is no control over who rents there once it is developed.

Ms. Laura Lehigh has lived in Kalamazoo for 8 years. The neighborhood is getting encroached upon by overdevelopment. Pocket parks are not for the general population but for the complex residents. 241 units probably means double that in cars. The development of Costco has already increased traffic in the area. The better step would be a step backward to zone the area for green space.

Ms. Lori Burrell lived downtown for 15 years and just purchased a house in Arcadia in the last year. She works at Linden Grove and walks to work every day. As a resident and teacher she is concerned for the safety of the neighborhood. Also concerned with a higher density population, infrastructure and sewer system. Ms. Burrell seconds the previous comments in opposition to the rezoning.

Mr. Bob Miller is the Associate Vice President for Community Outreach with Western Michigan University. Wants to answer Commissioner Cripe's questions on the mission of the Foundation and how it works with Western Michigan University. Mr. Miller also serves on the WMU Foundation Real Estate Committee staff support. The mission of the Foundation is a completely separate entity from Western Michigan University. Including a separate governing body. The Foundation exists to hold the Western Michigan University endowments. To make investments and oversee the investments of the WMU endowments. Over time this should give a return on these investments. This property was always planned to be developed over time. At one time there was discussion of moving Waldo Stadium to this property. The selling of the property that has become Walden Woods was as a return on the investment of the property as well as being able to return it to the tax rolls. Part of the motivation for the business park was also to return that property to the tax rolls. Commissioner Cripe also asked if the move of the property from Western Michigan University to the Foundation was to avoid the use restrictions placed on

the property when it was donated. Mr. Miller stated that his is not aware of any restrictions on the donation of the property.

Commissioner Cripe verified that the parcel is currently zoned for commercial and the future land use shows it as modern residential. Also what is the staff position on the influence of the neighborhood on the future zoning. Planner Kik stated that the 2005 West Side Plan showed Drake Road as a commercial corridor, with the next space being mixed use housing to buffer transitioning into the school followed by open space and finishing with residential. The rezoning coming into play to work with that graduation from commercial down to residential. Currently the apartment complex could go in if a retail portion were added to the plans. The rezoning only takes the retail portion out of the equation. The current zoning does not allow for the gradient that is in the West Side Plan. Commissioner Cripe asked if there was always green spaces intended for no development. Planner Kik responded that the entire preserve is still there. Commissioner Milliken asked if the infrastructure was part of the analysis when the West Side Plan was put together. Planner Kik replied that when the roadway was planned between Drake Road and Howard Street the neighborhood asked that they not be connected to the Arboretum Parkway. Arboretum was always planned to be a commercial corridor between Drake and Howard. This is true also for the utilities which were put in to accommodate commercial development of this area. Commissioner Milliken also asked if there has been any feedback on the Imagine Kalamazoo 2025 in regards to this area. Planner Kik talked about a recent meeting on September 27th where neighborhoods were invited to come speak about Imagine Kalamazoo 2025 and received a lot of input. There has not been enough time to go through all the data at this time. After the data has been sorted through, neighborhoods that need more outreach will be identified. Commissioner Coss asked if the traffic concerns will be addressed down the road. Planner Kik answered that site plan review is when the traffic will be addressed. There are requirements of traffic study that will need to be met before the development can go forward. The rezoning does not affect the site plan review or the traffic study.

Commissioner Milliken wanted to note that as a city planner he loved the commitment that was present in the Arcadia Neighborhood with the West Side Plan. He recognizes that this is a change; however the rezoning is consistent with the West Side Plan which leads to his support of the request. He is supporting the zoning request for its consistency with the West Side Plan. This is not support for the development or the site plan. Commissioner Wissner agrees that for the actual development there is a lot to be discovered. The zoning change should not factor as heavily as it looks tonight. In regards to the neighborhood concern on traffic would there be a recommendation that could be added to the zoning. Planner Kik responded that it cannot be added to the rezoning. Commissioner Cook agreed that the actual development is what is swaying tonight's discussion and not the rezoning itself. He encourages the developers to listen to the residents when planning the open spaces and reminds the residents that this rezoning will hold to a higher amount of open space than a commercial application.

Commissioner Milliken, supported by Commissioner Coss, moved to approve P.C. #2016.13: Request to rezone the east 12.78 acres of 4501 Arboretum Parkway from Zone CC (Commercial, Community District) to Zone RM-24 (Residential, Multiple-Family District). [Recommendation: motion to recommend to the City Commission to approve the rezoning request.] With a roll call vote the motion carried with a majority vote. Commissioners Cook and Coss voted no.

G. CITIZENS' COMMENTS (Regarding non-agenda items)

None

H. UNFINISHED BUSINESS

Planner Kik provided an update on Imagine Kalamazoo 2025. A citywide community meeting was held on September 27th and over 160 people attended. It was a lot of fun and there was a ton of feedback provided. This was absolutely the broadest reaching engagement ever. The next meeting will be October 27th at St. Joseph Church. There will be dinner and children activities. Spanish translation as well as sign language translation will be provided. City staff is working hard to be sure to reach out to everyone and get as much participation as possible. Right now the work is on prioritizing the goals and then the work will begin on the Master Plan. It is time to get to implementation. The Master Plan is about six months out from adoption in April.

I. NEW BUSINESS

None

J. CITIZENS' COMMENTS

Ms. Lori Burrell spoke to her disappointment in the approval of P.C. #2016.13.

K. CITY PLANNER'S REPORT

Planner Bauckham reported on several site plan projects. Three more projects have come in since the report was printed for the Commissioners. The highlights are as follows:

- Citgo gas station on Michigan Ave is replacing the center portion of the building and being enlarged
- Kalamazoo Enterprise Center on Parsons St is being redeveloped
- KPEP building on Walnut and Park made changes, will be a one story building
- Chemical Bank on Parkview and Whites under construction
- RX Optical had a groundbreaking last week
- Family Health Center on Alcott continuing with construction

There are currently 41 site plans on file.

The City has a consultant working to review the Lean Six Sigma program. This is efficiency driven and looks at every step of the process to see where it can be improved. The RRC program has two items to finish to get the certification. They are the marketing strategy and the public participation plan. There was a meeting at WMU with some professors at the transportation and research center and they will be conducting a handicap and accessibility study of the downtown area. They will provide a report on how accessible downtown is; from sidewalks, to parking spaces, to ramps.

Three special use permits on the agenda for October. There are two candidates for the open seat on the commission.

Planner Kik added that she and Laura Lam, Community Planning and Development, attended training called Coding for Places You Love, as part of the RCC certification. This was a workshop where a variety of cities attended and talked about rezoning, traffic, parking, downtown areas.

L. MISCELLANEOUS COMMENTS BY PLANNING COMMISSIONERS

Commissioner Cripe asked if staff will be sharing the thoughts on Imagine Kalamazoo with the City Commission. Planner Kik stated that City Commission has changed its meeting structure adding some workgroup meetings and that would probably be a good time to share those outcomes. City Commission has also been asked to attend the citywide meetings as well. With the Foundation for Excellence on everyone's mind the City Commission can hear directly from the city residents at these meetings.

Commissioner Cripe also asked for clarification of the WMU Foundation and the land in question tonight. Planner Kik replied that her understanding is that the WMU Foundation is a separate entity that works with the endowments for Western Michigan University. These are investment holdings and the land was a fiduciary responsibility and the intention was to sell it to further their endowment.

M. ADJOURNMENT

The meeting adjourned at 9:20 p.m.



NOTICE OF REZONING PUBLIC HEARING

KALAMAZOO CITY PLANNING COMMISSION

Dear Property Owner/Occupant:

This notice is to inform you that the Kalamazoo City Planning Commission will hold a public hearing to consider a request to change the zoning of a parcel of land as shown on the attached map. All proposed zoning changes within the City of Kalamazoo are reviewed by the Planning Commission at a public hearing. During the public hearing, the applicant is provided an opportunity to support the request, and interested area property owners and others are provided an opportunity to speak regarding the rezoning request.

The public hearing before the Planning Commission to consider the proposed rezoning will take place on **October 6, 2016, at or after 7:00 p.m. in the City Commission Chambers, second floor of City Hall, 241 W. South Street.** The public hearing is an opportunity for you to comment on the request to rezone the property. The Planning Commission will hear all comments regarding the proposed change and then make a recommendation to the Kalamazoo City Commission. The City Commission has the final authority in all zoning changes. Prior to the final decision, the City Commission will also hold a public hearing. As an area property owner, you will again be notified of the second public hearing.

A written petition may be submitted to the City Commission protesting the proposed zoning change. The petition must be presented to the City Commission before their final action, and shall be signed by one of the following:

- a) The owners of at least 20% of the area of land included in the proposed change.
- b) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of land included in the proposed change.

Publicly-owned land is excluded in calculating the 20% land area requirement. If it is determined that the protest petition is valid, the zoning change can only be approved by a two-thirds vote of the City Commission.

APPLICANT: Western Michigan University Foundation

APPLICATION NO: P.C. #2016.13

LOCATION OF PROPERTY: The east 12.78 acres of 4501 Arboretum Parkway – see attached map

CURRENT ZONING: CC (Commercial, Community District)

PROPOSED ZONING: RM-24 (Residential, Multiple-Family District)

If you have any questions regarding the proposed zoning change, call the Community Planning and Development Department at 337-8044, or you may submit written comments to this office prior to the meeting.

Sincerely,

Rebekah Kik
City Planner

Map attached

September 21, 2016

P. C. #2016.13 - 4501 Arboretum Parkway Rezone the east 12.78 acres of 4501 Arboretum Parkway from Zone CC to Zone RM-24.



ZONING

- M2 - MANUFACTURING, GENERAL
- M1 - MANUFACTURING, LIMITED
- COB2 - COMMERCIAL, CENTRAL BUSINESS
- CBTR - COMMERCIAL, BUSINESS
- TECHNOLOGY AND RESEARCH
- CC - COMMERCIAL, COMMUNITY
- CNO - COMMERCIAL, NEIGHBORHOOD OFFICE
- CN1 - COMMERCIAL (LOCAL) NEIGHBORHOOD
- OO - COMMERCIAL, OFFICE
- RM36 - RESIDENTIAL, MULTI-DWELLING
- RM15 - RESIDENTIAL, MULTI-DWELLING
- RM15C - RESIDENTIAL, MULTI-DWELLING
- CAMPUS AREA
- RD19 - RESIDENTIAL, DUPLEX
- RS7 - RESIDENTIAL, SINGLE-DWELLING
- RS5 - RESIDENTIAL, SINGLE-DWELLING



REZONE THE EAST 12.78 ACRES
 FROM ZONE CC TO ZONE RM-24





Commission Agenda Report

City of Kalamazoo

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

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

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

PREPARED BY: James Cornell, Wastewater Division Manager

DATE: 11/8/2016

SUBJECT: Ferric Chloride Contract Extension

RECOMMENDATION

It is recommended that the City Commission approve a one-year contract extension with PVS Technologies of Detroit, Michigan for the purchase of 200 dry tons of Ferric Chloride in the amount \$121,800.

BACKGROUND

Phosphorus is a nutrient received regularly from several industrial dischargers and must be chemically bound or biologically absorbed to remove it from the wastewater. To meet Michigan Department of Environmental Quality (MDEQ) regulatory requirements, the Kalamazoo Water Reclamation Plant (KWRP) and other point source dischargers have agreed to a more stringent effluent quality standard for phosphorus discharge to the Kalamazoo River. Ferric Chloride is the chemical chosen by (KWRP) staff after extensive testing and empirical evidence of its treatment capabilities.

In 2011 the Secondary Treatment Process was retrofitted to incorporate Biological Nutrient Removal along with Fine Bubble Diffusers. Biological nutrient removal has reduced the usage of chemicals for phosphorus removal. While most of the phosphorus removal is done biologically there are certain times of the year when reduced organic loadings or warm temperatures reduce the biological removal of phosphorus. Chemical treatment is essential when the biological system is overwhelmed or conditions are not favorable for biological phosphorus removal especially during the lowest Phosphorus discharge months of July, August and September.

PVS Technologies agreed to extend their contract at the unit price of \$609 per ton. This contract extension will begin January 1, 2017 and expire December 31, 2017

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

Funds have been budgeted for this expenditure in the Public Services 2017 budget. Approval of a contract extension with PVS Technologies represents no increase above the current supply price.

ALTERNATIVES

No alternatives have been considered.



Commission Agenda Report

City of Kalamazoo

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

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

REVIEWED BY: Jeffrey Hadley, Public Safety Chief

PREPARED BY: Ryan Tibbets, Assistant Chief – Fire Administration/Finance

DATE: 11/16/2016

SUBJECT: 2017 Hexagon/Intergraph Maintenance Agreement

RECOMMENDATION

It is recommended that the City Commission approve a twelve (12) month maintenance contract with Hexagon/Intergraph Corporation, 241 Disk Drive, Madison, AL, 35758 in the amount of \$167,300.02 for the continued maintenance of the City's computer-aided dispatching, records management and mobile data computing systems.

BACKGROUND

This request reflects the annual cost of the software maintenance for the City's computerized dispatch and mobile data computing systems which, in addition to Kalamazoo Public Safety, also serves Kalamazoo Township, Schoolcraft, and Augusta Police Departments, Kalamazoo County Sheriff Department, Oshtemo, Texas and Comstock Township Fire Departments. The contract allows for twenty-four (24) hour, seven (7) days a week dial-in help desk service and continued support from the company for software upgrades and "fixes" as required. Hexagon/Intergraph is the sole source provider of the system and is therefore recommended to provide maintenance on the computer system.

POLICY CONSIDERATIONS

None

COMMUNITY RESOURCES CONSULTED

None

FISCAL IMPACT

If the maintenance contract is not renewed by January 1, 2017, Public Safety is subject to a 25% penalty for each month of the lapsed contract in addition to the contract amount.

Funds for this maintenance contract are contained in Public Safety's 2017 Budget. In addition, the following agencies are required to pay yearly maintenance fees according to established contracts.

Kalamazoo Township Police Department
Kalamazoo County Sheriff Department
Oshtemo Township Fire Department
Texas Township Fire Department
Parchment Police Department
Comstock Fire Department

It is anticipated that the contract payments will be approximately \$45,000 in 2017 based on usage by the aforementioned agencies in 2016. The total cost for Public Safety will be approximately \$122,300.02.

ALTERNATIVES

An alternative to this recommendation would be to pay for maintenance and repairs on a material and labor basis. However, a renewable maintenance contract is the most efficient and cost effective method of maintaining the Hexagon/Intergraph system and it provides for the rights to the upgrades and fixes.

ATTACHMENTS:

Type	Description
------	-------------

- | | |
|---|--|
|  | Aerial Photo 2017 Hexagon/Intergraph Maintenance Agreement |
|---|--|

MAINTENANCE QUOTATION SUMMARY



Agreement: 1-QHLIFQ

Performance Period: 01/01/2017 through 12/31/2017

Payment Type: Prepaid Annually

Currency: USD

Bill To:

Kalamazoo MI City Of
ATTN: Accounting Department
Accounting & Finance Department
241 West South Street
Kalamazoo, MI 49007
USA

Ship To:

Kalamazoo MI City Of
ATTN: Jonathan Thurn
150 E. Crosstown Pkwy, Suite A
Kalamazoo, MI 49001
USA

Quotation Summary:

SW Maint	\$167,300.02
Total Services Cost*	\$167,300.02

*** Total is exclusive of applicable taxes. Applicable taxes will be added to the invoice.**

The maintenance services quoted herein are subject to the attached Hexagon Safety & Infrastructure Maintenance Terms and Conditions. This agreement shall only become binding and effective upon the written acceptance by Hexagon Safety and Infrastructure. This quotation expires ninety (90) days from the date of issue by Hexagon Safety and Infrastructure.

THIS IS NOT AN INVOICE

Offered by: Intergraph Corporation

Signature: Renecer Davis

Name: Renecer Davis

Maintenance Contract Administrator

Date: 09/08/2016

Email: renecer.davis@hexagonsi.com

Telephone: 256-730-1321

Fax: 256-730-5641

Accepted by:

Signature: _____

Name: _____

Title: _____

Date: _____

Email: _____

Telephone: _____

Fax: _____

Please mark one of the following options when submitting your acceptance:



A Purchase Order will not be issued.
Customer signature above constitutes notice to proceed with this agreement.



A Purchase Order will be issued and shall reference the terms and conditions of above referenced quote.

MAINTENANCE QUOTATION DETAIL



Kalamazoo MI City Of

Account Nbr: MDC-1331

Quote: 1-QHLIFQ-Kalamazoo MI City Of

PO#:

Performance Period: 01/01/2017 through 12/31/2017

Currency: USD

Bill To:

Kalamazoo MI City Of
ATTN: Accounting Department
Accounting & Finance Department
241 West South Street
Kalamazoo, MI 49007
USA

Ship To:

Kalamazoo MI City Of
ATTN: Jonathan Thurn
150 E. Crosstown Pkwy, Suite A
Kalamazoo, MI 49001
USA

Site Number:

00119756

Ln	Base Part	Description	Serial	Begin	End	Service Level	Mths	Qty	Mth Cost	Total Cost
1	IPS0002	I/Dispatcher NL	1-18096622	01/01/2017	12/31/2017	Premium	12	11	\$316.00	\$41,712.53
2	IPS0004	I/Informer NL	1-18174981	01/01/2017	12/31/2017	Premium	12	2	\$422.05	\$10,129.27
3	IPS0004A	I/Informer to I/LEADS NL	1-297003549	01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
4	IPS0009	I/Mobile Data Terminal NL	1-214190424	01/01/2017	12/31/2017	Premium	12	1	\$843.03	\$10,116.41
5	IPS0019	I/LEADS-Server NL	MME-1-99Z0D	01/01/2017	12/31/2017	Premium	12	1	\$401.70	\$4,820.40
6	IPS0020	I/LEADS-Records Management System CC - Desktop Client	1-214784084	01/01/2017	12/31/2017	Premium	12	100	\$29.99	\$35,992.32
7	IPS0024	I/LEADS-Civil Process System CC	MME-1-99Z0L	01/01/2017	12/31/2017	Premium	12	1	\$183.18	\$2,198.10
8	IPS0027	I/LEADS-Mugshot Capture System NL	MME-1-AEKBR	01/01/2017	12/31/2017	Premium	12	1	\$183.18	\$2,198.10
9	IPS0030	I/LEADS-CAD Link NL	MME-1-99Z0T	01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
10	IPS0038	I/Mobile CC	1-214190431	01/01/2017	12/31/2017	Premium	12	75	\$21.42	\$19,281.60
11	IPS0038	I/Mobile CC	1-296530011	01/01/2017	12/31/2017	Premium	12	12	\$21.42	\$3,085.06
14	IPS1163	I/Map Editor CC	1DOF3TA00119756	01/01/2017	12/31/2017	Premium	12	1	\$80.34	\$964.08
17	IPS0038	I/Mobile CC	1-321374866	01/01/2017	12/31/2017	Premium	12	1	\$20.35	\$244.23
18	IPS0001HAC	I/Executive for High Availability NL - Component		01/01/2017	12/31/2017	Premium	12	1	\$1,265.09	\$15,181.05
19	IPS0001HABCK	I/Executive for High Availability NL - Backup License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
20	IPS0002TST	I/Dispatcher NL - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
21	IPS0038TST	I/Mobile CC - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
22	IPS0042BTST	I/NetViewer - 50 users - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
23	IPS0001HATST	I/Executive for High Availability NL - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
24	IPS0002BCK	I/Dispatcher NL - Backup License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
25	IPS0009TST	I/Mobile Data Terminal NL - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
26	IPS0019TST	I/LEADS-Server NL - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
27	IPS0024TST	I/LEADS-Civil Process System CC -		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00

MAINTENANCE QUOTATION DETAIL



Kalamazoo MI City Of

Account Nbr: MDC-1331

Quote: 1-QHLIFQ-Kalamazoo MI City Of

PO#:

Performance Period: 01/01/2017 through 12/31/2017

Currency: USD

Ln	Base Part	Description	Serial	Begin	End	Service Level	Mths	Qty	Mth Cost	Total Cost
28	IPS0027TST	Test License I/LEADS-Mugshot Capture System NL - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
29	IPS0030TST	I/LEADS-CAD Link NL - Test License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
30	IPS0019BCK	I/LEADS-Server NL - Backup License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
31	IPS0030BCK	I/LEADS-CAD Link - Backup License		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
32	GSPX5007	GeoMedia Professional CC	1DOF3TA00119756SHP U1	01/01/2017	12/31/2017	Premium	12	1	\$188.53	\$2,262.37
33	GSPY5005C	GeoMedia Essentials NL - Component	1DOF3TA00119756SHP U1	01/01/2017	12/31/2017	Premium	12	1	\$33.21	\$398.49
35	IPS0042B	I/NetViewer - 50 users	MME-1-99BE4	01/01/2017	12/31/2017	Premium	12	1	\$958.72	\$11,504.69
36	IPS21181C	SAP BusObj Web Intelligence for Direct - 5 CC - Comp		01/01/2017	12/31/2017	Premium	12	1	\$112.48	\$1,349.71
37	IPS21180C	SAP BusOBJ Intl Plat for Direct - 5 CC - Comp		01/01/2017	12/31/2017	Premium	12	1	\$190.67	\$2,288.08
38	IPS21179C	INGR Rep Artifacts for Direct CAD - Comp		01/01/2017	12/31/2017	Premium	12	1	\$92.12	\$1,105.48
39	IPS21180TSTC	SAP BusOBJ Intl Plat for Direct - 5 CC - Test - Comp		01/01/2017	12/31/2017	Premium	12	1	\$0.00	\$0.00
40	IPS0048	I/FRMS-CADlink NL		01/01/2017	12/31/2017	Premium	12	1	\$205.67	\$2,468.04
										Subtotal for Site Number 00119756
										\$167,300.02

Grand Total Excluding Tax \$167,300.02

MAINTENANCE RENEWAL POLICIES

LATE RENEWAL

If your maintenance renewal is not received prior to the performance period begin date, in addition to any reinstatement fees that may be charged as described below, maintenance services for the new coverage period may be terminated or suspended by Intergraph Corporation d/b/a Hexagon Safety & Infrastructure. This includes your ability to access system support or the knowledge base, and the ability to log or check support requests. Therefore it is important that you do not delay in renewing your maintenance service contract.

REINSTATEMENT FEE FOR LAPSE IN HEXAGON MAINTENANCE COVERAGE

Hexagon charges a 25% reinstatement fee when maintenance coverage lapses because a renewal is not received by the performance period begin date. Notwithstanding the foregoing, for all Oracle products there is a 50% reinstatement fee when maintenance coverage lapses because a renewal is not received by the performance period begin date. The reinstatement fee will be calculated and assessed for each month in which there has been a lapse in coverage. The details of this fee may be found in Section 4.1 of the Terms and Conditions. To ensure you are not assessed a reinstatement fee, please return your renewal instructions before the performance period begin date.

LICENSE RE-PURCHASE FOR LAPSE IN MICROSOFT SQL SERVER AND BIZTALK MAINTENANCE COVERAGE

Hexagon's agreement with Microsoft for reinstating maintenance that has lapsed on Microsoft SQL Server and BizTalk licenses obtained from Hexagon and for which Hexagon provides maintenance and support. Microsoft only allows Hexagon to provide maintenance (including upgrades of the Microsoft products) to you if you provide renewal instructions prior to the performance period begin date shown in the attached quote and without any lapse in coverage. Any maintenance renewal received on or after the performance period begin date is considered to be a lapse in coverage and will not be accepted by Hexagon. Therefore, if your renewal for the Microsoft license maintenance is not received by Hexagon by the performance period begin date, when you wish to upgrade to a new version of SQL Server and/or BizTalk, **you are**



required to re-purchase the licenses for the Microsoft products at the then current list price of those products, plus one year of maintenance coverage from the date of re-purchase. You will not be eligible to obtain support services from Hexagon during any lapse in maintenance coverage for SQL Server and/or BizTalk.

BUSINESS INTELLIGENCE MAINTENANCE BEGINS WITH LICENSE PURCHASE; MAINTENANCE RENEWALS MUST BE RECEIVED BEFORE CURRENT MAINTENANCE TERM EXPIRES

Due to constraints related to third-party content in the Business Intelligence suite, the maintenance term must begin when Business Intelligence licenses are purchased. The maintenance must renew, if elected, on the anniversary of the license purchase; therefore, your renewal instructions must be received prior to the performance period begin date shown in the attached quote and without any lapse in coverage. Any maintenance renewal received on or after the performance period begin date is considered to be a lapse in coverage and will not be accepted by Hexagon. Therefore, if your renewal for the Business Intelligence license maintenance is not received by Hexagon by the performance period begin date, when you wish to upgrade to a new version of Business Intelligence, [you are required to purchase an upgrade of the Business Intelligence products at a price that is fifty percent \(50%\) of the then current list price, plus one year of maintenance coverage from the date of the upgrade purchase](#). You will not be eligible to obtain support services from Hexagon during any lapse in maintenance coverage for the Business Intelligence products.

CHARGES ARE PAYABLE ANNUALLY AND IN ADVANCE

Hexagon's payment terms are annual, in advance, for maintenance service contracts. If you wish to instead pay quarterly in advance, please request a revised quotation. A convenience fee of 15% will be added to contracts with quarterly payment schedules instead of annual. The convenience fee will be prorated across the four quarterly invoices.



Hexagon Safety & Infrastructure

U.S. Maintenance Terms and Conditions for Software

This document ("Terms and Conditions") and the Quote to which these Terms and Conditions are attached set forth the terms and conditions for the maintenance of software and related support services by Intergraph Corporation doing business as Hexagon Safety & Infrastructure ("Hexagon") for Customer.

1. DEFINITIONS

- 1.1. "Affiliate" means any entity or person controlled by or under common control of Hexagon. For the purposes of this Agreement, the term "control" means ownership, directly or indirectly, of equity securities entitling the owner to exercise in the aggregate equal or more than twenty-five percent (25%) of the voting power of the entity in question. For the avoidance of doubt, any Affiliate of Hexagon is as well deemed an Affiliate of any other Affiliate of Hexagon; also Hexagon is an Affiliate of any of its Affiliates.
- 1.2. "Agreement" means (1) the binding contract incorporating these Terms and Conditions as well as the Quote submitted to Customer under Section 2 and/or, if applicable, (2) the binding contract incorporating a Quote submitted to Customer under Section 3.2 and/or Section 12.1 as well as the maintenance service contract terms and conditions referenced therein.
- 1.3. "Coverage Period" means the period of performance set forth in the Quote.
- 1.4. "Covered Products" means the software listed on the Quote for which Services are to be provided to Customer by Hexagon. Covered Products shall also include additional copies of the software (i) where the original software is already covered by the Agreement and (ii) for which additional licenses are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include Software Products, as well as Third Party Software.
- 1.5. "Customer" means the entity or person purchasing Services.
- 1.6. "Quote" means a quotation for Services submitted to Customer by Hexagon or an authorized Hexagon partner, along with a product quotation at time of purchase of the product to be maintained. according to Section 2, or a quotation for Services submitted to Customer by Hexagon, according to, Section 3.2 and/or Section 12.1.
- 1.7. "Services" means the maintenance and support services for Covered Products that are further described in the Agreement.
- 1.8. "Software Product" includes Hexagon's or Hexagon's Affiliate's computer software and all of the contents of the files, disk(s), CD-ROM(s) or other media with which the software is provided, including any templates, data, printed materials, and "online" or electronic documentation, all copies, and any Updates of such Software Products. Software Products are subject to all of the terms and conditions of the End-User License Agreement ("EULA") provided with the Software Product.
- 1.9. "Third Party Software" means computer software or other technology in which any person or entity, other than Hexagon or Hexagon's Affiliate, has any right, title or interest, including any restrictions or obligations (such as obligations to obtain consents or approvals and restrictions that may be eliminated only by obtaining such consents or approvals)

applicable to the computer software or technology, but does not include software embedded in the Software Products by license from third parties. The use of Third Party Software is subject to all of the terms and conditions of the third party's software license or similar agreement ("SLA") provided with the Third Party Software.

- 1.10. "Update(s)" means any Upgrade, modified version, fix, patch and/or update of Covered Products. The use of Updates is subject to all of the terms and conditions of the EULA or SLA provided with Customer's current version of the Covered Products.
- 1.11. "Upgrade(s)" means each new release of Covered Products. Upgrades require a full installation and may be provided with a separate EULA or SLA. Any EULA or SLA delivered with the Upgrade will supersede any EULA or SLA associated with prior releases of the Covered Products.

2. AUTHORIZATION OF SERVICES

By either (a) returning a signed Quote; (b) submitting a signed purchase order referencing a Quote; (c) paying any charges as set forth on a Quote; or (d) accepting delivery of Services as set forth on a Quote, Customer authorizes Hexagon to provide the Services for Covered Products during the Coverage Period in accordance with the Agreement. The Services will be provided by Hexagon in accordance with the Scope of Coverage as set forth in Section 5. The Agreement shall only become binding and effective upon the written acceptance by Hexagon or the first delivery of the Services set forth in the Quote, whichever is earlier.

3. TERM

- 3.1. Term. This Agreement shall begin, retroactively (if applicable), on the first calendar day of the first month of the applicable Coverage Period, and shall expire at the end of the Coverage Period unless terminated earlier as provided in Section 18, or renewed by mutual agreement of the parties in accordance with Section 3.2. The Coverage Period shall be for whole months only.
- 3.2. Renewal. Approximately ninety (90) days prior to the expiration date of any Coverage Period, Hexagon will submit to Customer a renewal Quote that includes pricing for the upcoming Coverage Period. Section 2 shall apply mutatis mutandis to the formation of the Agreement based on the renewal Quote as well as the maintenance service contract terms and conditions referenced therein or made available to Customer together with the renewal Quote. If the Agreement is not entered into based on the renewal Quote as well as the maintenance service contract terms and conditions referenced therein, Hexagon, after the preceding Coverage Period has expired, shall be entitled to discontinue Services for the affected Covered Products, including access to system support or knowledge base, and/or end the ability of Customer to log or check support requests.

4. REINSTATEMENT OF MAINTENANCE SUPPORT COVERAGE

- 4.1. Lapse in Software Maintenance Coverage. To reinstate Services after any termination or suspension thereof, Customer must pay a reinstatement fee. The Coverage Period for any reinstated Services (the "Renewal Coverage Period") shall begin on the first day after the expiration or termination of the last paid-in-full Coverage Period and extend until the next purchase anniversary date of the lapsed Covered Products. The reinstatement fee will equal twenty-five percent (25%) of the past due maintenance charges (rounded up to whole months only) for the Renewal Coverage Period, and shall be in addition to the total maintenance charges due for the Renewal Coverage Period, all calculated at the current maintenance list price. Upon request of Customer, Hexagon will provide a Quote for the Renewal Coverage Period, to include the reinstatement fee, which is applicable only for reinstatement made in the then-current month.

- 4.2. Failure to Obtain Maintenance Coverage. In the event Services were not purchased at the time that the Covered Product was originally purchased, in order to obtain Services, Customer must pay one hundred twenty-five percent (125%) of all maintenance payments from the date the original Covered Product was purchased up to the date the Services are actually purchased, plus one hundred percent (100%) of the remaining Coverage Period that expires upon the anniversary date of the original Covered Product purchase, all calculated at the current maintenance list price. The Coverage Period for such Covered Products will begin on the first day of the month in which the Covered Products were originally purchased.

5. SCOPE OF COVERAGE FOR SOFTWARE PRODUCTS

Services described in this Section apply to Software Products only. Services for Third Party Software are set forth in Section 10.

Hexagon offers two levels of Services for Software Products included in the Covered Products: Standard Support and Premium Support. Under both levels of Services, Hexagon shall provide reasonable commercial efforts to aid in the diagnosis and correction of defects in and provide general advice as to the use of the Software Products included in the Covered Products. The level of Services will be set forth on the Quote and will include the following:

- 5.1. **Standard Support:** Standard Support will include and be limited to the following:
- 5.1.1. Help Desk Support. Out-of-the-box functionality support via the Help Desk (telephone or eService via Hexagon's Customer Support Web Site where available at <https://support.hexagonsafetyinfrastructure.com>). Phone support for all priority levels of software errors is available on Monday through Friday from 8AM – 5PM at Customer's local time, excluding Hexagon-observed holidays. Local variances in support hours will be posted on the Customer Support Web Site or applicable local support website, or can be determined by contacting Customer's local Hexagon office.
 - 5.1.2. Updates. Access to all available Updates of Software Products included in the Covered Products. Hexagon will notify Customer when Updates are made available for any Software Products for which Service has been purchased, by way of posting notices of such to the "Support Notices and Announcements" section on the Customer Support Web Site or applicable local support website or via direct notification by Hexagon. If applicable, Customer may also register on the Customer Support Web Site or applicable local support website to automatically receive email notifications when a new release of a Software Product is made available by Hexagon. Updates are shipped to Customer upon Customer request. Hexagon is not obligated to produce any Updates.
 - 5.1.3. Knowledge Base. Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool.
- 5.2. **Premium Support:** Premium Support will include all of the features available under Standard Support. Additionally, when the software error is considered to be critical (meaning production is down), then phone support is also available after-hours and on Hexagon-observed holidays.

Hexagon may not provide both levels of support for all Software Products in all countries. Customer may choose any level of Services offered, however all Software Products included in the Covered Products under the Agreement must have the same level of Services when available.

Services are only available for the current version and the one version prior to the current version of a particular Software Product. Services are limited to the specific Software Products listed on the Quote and functioning on the appropriate Hexagon-supported operating system.

6. MINIMUM SYSTEM REQUIREMENTS; CUSTOMER'S OBLIGATIONS

Performance of Services by Hexagon is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

- 6.1. Customer's hardware and operating system software must meet the minimum system requirements specified by Hexagon and made available to Customer upon request.
- 6.2. Customer's system must have input and output devices that enable the use of Hexagon's diagnostic programs and supplemental tests. The specifications of such devices shall be made available to Customer by Hexagon upon request.
- 6.3. Customer will be responsible for any required adjustments or updates to its hardware and/or operating system software required to accommodate Updates of Covered Products.
- 6.4. Customer will ensure availability of its own system technical support personnel so that Hexagon can fulfill its Service obligations.
- 6.5. When reporting problems to Hexagon's Help Desk, Customer will provide a complete problem description, along with all necessary documents and information that is available to Customer and required by Hexagon to diagnose and resolve the problem. Customer will grant all necessary access to all required systems as well as to the Covered Products, and any other reasonable assistance needed.
- 6.6. Customer will carry out any reasonable instructions on troubleshooting or circumvention of the problem provided by Hexagon through the Authorized Contact (as defined below in Section 8.1) immediately and in conformity with these instructions, and will install any necessary patches, defect corrections or new versions from Hexagon.
- 6.7. Customer is solely responsible for assuring the compatibility of non-Hexagon products with products provided by Hexagon.
- 6.8. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. Hexagon will not be liable for lost data.

In addition, Customer shall provide for any other requirements reasonably specified by Hexagon and related to the rendition of the Services to be met.

If Customer fails to fulfill its Customer Obligations, Hexagon is entitled to bill Hexagon's time and effort made necessary by Customer's failure at Hexagon's currently stated hourly rates.

7. EXCLUDED SOFTWARE SERVICES

Services for the following are outside the scope of this Agreement and may be available under separate agreement at an additional charge (collectively "Excluded Services"):

- 7.1. Installation of any Covered Product, Update, or interface software
- 7.2. Network configuration
- 7.3. Configuration or customization of Covered Products to customer requirements.
- 7.4. System-level tuning and optimization and system administration support
- 7.5. Programming or software development
- 7.6. Training
- 7.7. Services required because the Authorized Contact is not available or is not trained in accordance with Section 8

- 7.8. On-site Services
- 7.9. Services outside of the regular business hours associated with the applicable level of Services
- 7.10. Services required due to modifications of Covered Products by Customer. In the case of Hexagon software modules which assist in the creation and use of Customer software, the performance of Services under the Agreement is restricted to unmodified components of these Covered Products
- 7.11. Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the documentation provided with the Covered Products
- 7.12. Services required due to failure of software or hardware not supplied by Hexagon and not covered in the Agreement
- 7.13. Services required due to Customer's use of hardware or software that does not meet Hexagon specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software
- 7.14. Services required due to software or portions thereof that were incorrectly installed or configured, or use in an environment inconsistent with the support environment specified by Hexagon, or used with peripherals, operational equipment or accessories not conforming to Hexagon's specifications
- 7.15. Services required due to cases of force majeure, especially lightning strikes, fire or flood or other events not caused through Hexagon's fault.
- 7.16. Services required due to customer's failure to fulfill the Customer Obligations set forth in Section 6
- 7.17. Services required due to faulty or incomplete Customer data.

When ordered by Customer, Excluded Services or other software maintenance support services that are outside the scope of this Agreement will be billed by Hexagon according to the stated hourly rates and material prices in effect at the time such service is performed.

8. SYSTEM SUPPORT TECHNICIAN

- 8.1. Customer will appoint a minimum of two and a maximum of three contact people who are each authorized to make use of the Services ("Authorized Contacts").
- 8.2. Customer must make sure that the Authorized Contacts have adequate expertise and experience to make possible a targeted and professionally accurate description of malfunctions and make it possible for Hexagon to handle them efficiently. Authorized Contacts must have successfully completed Hexagon product training or complete it at the next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software systems. Customer agrees to promptly notify Hexagon of any replacement of an Authorized Contact.

9. REMOTE ACCESS

Customer will permit Hexagon to electronically access Customer's system via SecureLink™. SecureLink™ is a tool for providing secure, auditable remote access to Customer's system in order for Hexagon support personnel ("Customer Support") to effectively troubleshoot critical or complex problems and to expedite resolution of such issues. The Authorized Contacts should be available to assist Hexagon Customer Support as needed during this entire process. Customer Support will only access Customer's system with the knowledge and consent of Customer. For local variances specific

to the use of remote access tools other than SecureLink™, Customer should contact the local Hexagon support office.

10. THIRD PARTY SOFTWARE

Support and Updates of Third Party Software shall be provided in the fashion and to the extent or duration that Hexagon is authorized to provide such by the third party manufacturer of the Third Party Software, and such Third Party Software Services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

Services and Updates for any Third Party Software that are not listed on the Quote must be obtained from the third party owner of the products or their designated representative.

11. REQUIRED COVERAGE

- 11.1. Multiple or Interdependent Licenses. Customer may not decline maintenance for individual licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site, except in accordance with the relinquishment process described in Section 12.2.
- 11.2. Prerequisite Licenses. All prerequisite Hexagon software licenses that are necessary to operate the Covered Products for which Customer desires Services under the Agreement must also be included as Covered Products and listed on the Quote.

12. ADDITIONS AND REMOVALS OF COVERED PRODUCTS

- 12.1. Additions of Covered Products to Maintenance.
 - 12.1.1. Additional Software Products from Hexagon. In the event Customer purchases additional licenses of Software Products from Hexagon during the term of this Agreement, Hexagon will provide Customer with a written extension Quote that reflects the additional licenses, the effective date of Service, and charges for the additional licenses, pursuant to the Agreement.
 - 12.1.2. Additional Software Products from a third party. In the event Customer obtains additional licenses of Software Products from an authorized reseller or by any other means, Customer agrees to promptly notify Hexagon in writing about the newly acquired Software Products, and upon receipt of such notice, Hexagon will provide Customer with a written extension Quote that reflects the additional licenses, the effective date on which Hexagon may commence the Services with respect to the copies of the Software Product pertaining to the additional licenses, and the charges that would be due in return for these Services pursuant to the Agreement.
 - 12.1.3. Section 2 shall apply mutatis mutandis to the formation of the Agreement based on the extension Quote submitted to Customer under Section 12.1.1 or Section 12.1.2 as well as the maintenance service contract terms and conditions referenced therein or made available to Customer together with the extension Quote. If the Agreement is not entered into based on the extension Quote as well as the maintenance service contract terms and conditions referenced therein, then the terms and conditions in Section 4 regarding reinstatement of Services will apply to the additional licenses of Software Products. If, however, the additional Software Products are multiple, interdependent, or prerequisite licenses as described in Section 11 above, Services may not be declined, and Services and the appropriate monthly charges will begin on the effective date as shown on the extension Quote.
 - 12.1.4. Additional Software Products via Software Transfer Policy. Customer shall purchase Services on all additional licenses of Software Products for a site obtained via software license transfer. Any such software license transfers shall be in accordance with the

then-current Hexagon Software Transfer Policy and the EULA or other applicable Software License Agreement delivered with the Software Product.

- 12.2. Removal of Covered Products from Maintenance. Either party may provide written notice to the other party at least sixty (60) calendar days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Agreement for the renewal period. Neither party may remove Covered Products except upon Agreement renewal. Customer may not remove from the Agreement individual software licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site, unless Customer has first certified to Hexagon on a "Software Relinquishment Agreement" that the copies of the Covered Product for which Customer desires to cease Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its system(s). Should Customer desire to reinstate Services for the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

13. PAYMENT

- 13.1. Terms of Payment. Charges for Services are due and payable annually and in advance. For Customers desiring to pay quarterly and in advance instead of annually and in advance, Customer must request a revised Quote which shall include a convenience fee increase of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices. All charges are due net thirty (30) calendar days from the date of invoice or prior to the beginning of the applicable Coverage Period, whichever is earlier. Charges for Covered Products added during a Coverage Period shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon receipt of invoice.
- 13.2 Past Due Accounts. HEXAGON RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Hexagon, Customers who have not paid any charges when due (i) under this Agreement, (ii) under any other agreement between the parties, or (iii) under any agreement between Hexagon and Customer's parent and/or subsidiary at least fifty percent (50%) owned by Customer, may not be rendered Services until all past due charges are paid in full. Additionally, Hexagon shall charge and Customer agrees to pay interest at the rate of two percent (2%) per month or the maximum amount allowed by law, whichever is less, for all amounts not received when due. The start of the Coverage Period shall not be postponed due to delayed payment of any charges. If Hexagon is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These collection costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees and court costs.
- 13.3 Customer's Responsibilities Concerning Invoice Questions. Subject to applicable law, if Customer intends to dispute a charge or request a credit, Customer must contact Hexagon within ten (10) calendar days of the date on the invoice. Customer waives any right to dispute a charge or receive a credit for a charge or Services that Customer does not report within such period.

14. CUSTOMER WARRANTIES

During the Coverage Period, Customer shall commit to the following:

- 14.1. Subject to Section 12.2, Customer warrants that for all Covered Products supported under the Agreement, all licenses of a Covered Product for which Customer has multiple copies in its possession and that are located at the site referenced on the Quote, and all prerequisite licenses necessary to operate Covered Products, are listed on the Quote. If all like Covered Products or prerequisite software licenses are not listed on the Quote, Customer agrees to notify Hexagon so that Hexagon may issue a revised Quote to Customer.
- 14.2. Customer warrants that Services provided herein shall be utilized only for the quantity of Covered Products licenses listed on the Quote.
- 14.3. Customer shall, and Customer shall cause each of Customer's employees and representatives to, comply with each and every term and condition of the EULA and/or SLA applicable to the Covered Products supported under the Agreement.

15. INTELLECTUAL PROPERTY

- 15.1. Software License. Any Upgrades furnished hereunder shall remain the property of Hexagon, Hexagon's Affiliate or applicable third party, and are licensed in accordance with the then current Hexagon EULA, EULA of Hexagon's Affiliate or third party SLA, which shall supersede any EULA or SLA associated with prior releases of the Software Products or Third Party Software. Upon Customer's request, Hexagon shall provide customer with such EULA or SLA. Upon Hexagon's request, Customer agrees to execute a EULA or SLA, as applicable, for Covered Products provided without an included EULA or SLA.
- 15.2. Confidential Information. Hexagon and Customer each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other party which such party considers to be confidential, proprietary, a trade secret or otherwise restricted. As used in this Agreement "Confidential Information" shall mean all information, which may include third party information, in any form, furnished or made available directly or indirectly by one party to the other that is marked confidential, restricted, proprietary, or with a similar designation. The terms and conditions, and existence, of this Agreement shall be deemed Confidential Information. Confidential Information also shall include, whether or not designated "Confidential Information" (i) all specifications, designs, documents, correspondence, software, documentation, data and other materials and work products produced by either Hexagon or its subcontractors, and (ii) with respect to either party, all information concerning the operations, financial affairs and businesses, and relations with its employees and service providers.

Each party's Confidential Information shall remain the property of that party or relevant third party except as expressly provided otherwise by the other provisions of this Agreement. Customer and Hexagon shall each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own information of a similar nature.

The parties shall take reasonable steps to ensure that their respective employees comply with these confidentiality provisions. This Section shall not apply to any particular information which either party can demonstrate (i) was, at the time of disclosure to it, generally publicly available; (ii) after disclosure to it, is published or otherwise becomes generally publicly available through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without restriction on disclosure; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such

information to it without any obligation to restrict its further use or disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the disclosing party. In addition, a party shall not be considered to have breached its obligations by disclosing Confidential Information of the other party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such party advises the other party promptly and prior to making such disclosure in order that the other party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

16. LIMITED WARRANTIES; WARRANTY DISCLAIMERS

16.1. Limited Warranties.

16.1.1. Hexagon Services Warranty. Hexagon warrants for a period of thirty (30) days from the date of Services that the Services provided pursuant to this Agreement, in the form of a defect correction and/or maintenance services, will be performed with reasonable skill and care in accordance with the requirements set forth herein, provided the Covered Products for which the Services are provided are used under normal conditions and in strict accordance with the terms and conditions herein. Customer agrees to promptly notify Hexagon of any unauthorized use, repair, or modification, or misuse, as well as suspected defects in any Services provided pursuant to this Agreement.

16.1.2. Hexagon Software Warranty. Hexagon warrants for a period of thirty (30) days from the date of shipment of any Software Product that, under normal use, software delivery media shall be free from defect in material or workmanship. Additional warranties for Software Products may be provided in the applicable Hexagon Terms and Conditions for Sale or other agreement between the parties governing the delivery of Software Products.

16.1.3. Pass-Through Third Party Warranties. Third Party Software is only warranted pursuant to a pass-through warranty to Customer from the applicable Third Party Software manufacturer and only to the extent warranted by the applicable Third Party Software manufacturer.

16.1.4. NO OTHER WARRANTIES. THE ABOVE LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND REPRESENT THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF HEXAGON. THE LIMITED WARRANTIES PROVIDE CUSTOMER WITH SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY JURISDICTION TO JURISDICTION. IF A GREATER WARRANTY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN HEXAGON WARRANTS THE SERVICES OR COVERED PRODUCTS TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.

16.2. Remedies. In the event a warranted Service, Covered Product, or Update provided pursuant to this Agreement does not substantially comply with the limited warranties set forth in the Agreement, Hexagon's entire liability and Customer's exclusive remedy shall be, in Hexagon's sole and absolute discretion, either (i) providing of a Service, Covered Product, or Update which conforms substantially with the warranty; or (ii) a refund of the purchase price of the particular warranted Service, Covered Product, or Update for the period of time that the warranted Service, Covered Product, or Update did not substantially conform to the limited warranties set forth in this Agreement.

Hexagon is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations and liability as provided in this Agreement, but in no other respects and for no other purpose.

- 16.3. WARRANTY DISCLAIMERS. ANY WARRANTIES HEREUNDER ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED MODIFICATION OF A WARRANTED ITEM; AN UNAUTHORIZED ATTEMPT TO REPAIR A WARRANTED ITEM; OR MISUSE OF A WARRANTED ITEM, INCLUDING WITHOUT LIMITATION, USE OF WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR WITHOUT ROUTINELY MAINTAINING A WARRANTED ITEM. CUSTOMER SHALL PROMPTLY NOTIFY HEXAGON OF ANY SUSPECTED DEFECTS IN COVERED PRODUCTS DELIVERY MEDIA. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HEXAGON AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, COVERED PRODUCTS, AND UPDATES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. HEXAGON DOES NOT WARRANT THAT ANY SERVICES, COVERED PRODUCTS, AND UPDATES PROVIDED PURSUANT TO THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES HEXAGON WARRANT THAT ANY SERVICES, COVERED PRODUCTS, AND UPDATES WILL OPERATE UNINTERRUPTED OR ERROR FREE. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES IS RULED INVALID, THEN HEXAGON DISCLAIMS EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. HEXAGON MAY SHARE INFORMATION FROM TIME TO TIME RELATED TO ITS EXPECTED DIRECTION, ROADMAP, OR VISION FOR ITS PRODUCTS AND SERVICES, ALL OF WHICH IS SUBJECT TO CHANGE AT ANY TIME IN HEXAGON'S SOLE DISCRETION. CUSTOMER SHOULD NOT RELY UPON STATEMENTS, PRESENTATIONS, OR INFORMATION REGARDING FUTURE FEATURES, FUNCTIONS, OR PRODUCTS FOR ANY PURPOSE IN ABSENCE OF HEXAGON'S FORMAL AND EXPRESS CONTRACTUAL COMMITMENT TO DELIVER THE SAME.

17. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HEXAGON OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OR PRODUCTION, LOSS OF REVENUE OR PROFIT, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION, CLAIMS OF THIRD PARTIES OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THIS AGREEMENT, EVEN IF HEXAGON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HEXAGON'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO HEXAGON DURING THE PAST TWELVE MONTHS UNDER THIS AGREEMENT AS OF THE DATE THE EVENT GIVING RISE TO THE CLAIM OCCURS. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NO CLAIM, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN TWO (2) YEARS FOLLOWING THE INITIAL EVENT GIVING RISE TO THE CAUSE OF ACTION. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IF ANY PART OF THIS SECTION IS HELD INVALID, THEN HEXAGON LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

18. TERMINATION

This Agreement may only be terminated prior to its expiration in the following ways:

- 18.1. Either party petitions for reorganization under the Bankruptcy Act or is adjudicated as bankrupt, or a receiver is appointed for the other party's business.
- 18.2. Customer fails to pay Hexagon any amount when due (i) under this Agreement; or (ii) under any other agreement between the parties.
- 18.3. Customer's license to the Covered Products for which Customer has purchased Services is terminated.

19. RESTRICTIONS

- 19.1. **Non-Solicitation of Employees.** Customer agrees that it will not, without the prior written consent of Hexagon, solicit or hire any Hexagon employee, or induce such employee to leave Hexagon's employment, directly or indirectly, during the term of this Agreement and for a period of twelve (12) months after the Agreement expires or is terminated. Customer agrees that a breach of this provision would cause actual and substantial damages to Hexagon such that it would be very difficult to calculate actual damages. Accordingly, any such breach will entitle Hexagon to recover liquidated damages from Customer in the amount equal to one (1) year of the affected employee's annual salary plus benefits for each such breach, as well as expenses, costs, and reasonable attorneys' fees incurred by Hexagon in seeking enforcement of this Agreement. Customer agrees that the foregoing amount is intended to be, and in fact is, a reasonable estimate of the actual damages that would be incurred by Hexagon if Customer were to breach this provision, and that this amount is not intended to be, and in fact is not, a penalty. In addition, Hexagon shall be entitled to equitable or injunctive relief to prevent further breaches. For purposes of this Section, the term "employee" means employees of Hexagon and/or any Hexagon subsidiary and/or any of Hexagon's subcontractors who directly support Customer.
- 19.2. **United States Government Restricted Rights.** If a Covered Product (including any Updates, documentation or technical data related to such Covered Products) is licensed, purchased, subscribed to or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Section also applies.
 - 19.2.1. For civilian agencies: The Covered Product was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the Federal Acquisition Regulations ("FAR") 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).
 - 19.2.2. For units of the Department of Defense ("DoD"): The Covered Product was developed at private expense and is "commercial computer software" submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations ("DFARS") DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).
 - 19.2.3. Notice: The Covered Product is "commercial computer software" as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes "technical data" as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this "commercial computer software" shall be in strict accordance with the manufacturer's standard commercial license, which is attached to and incorporated into the governing Government contract. Hexagon and any applicable Third Party Software manufacturers are the manufacturers. This Covered Product is unpublished and all rights are reserved under the Copyright Laws of the United States.

- 19.3. Export Restrictions. All Software Products and all Third Party Software (including any Updates, documentation or technical data related to such software products) licensed, purchased, subscribed to or obtained, directly or indirectly, from Hexagon, its subsidiaries or distributors (collectively, "Export Controlled Products") are subject to the export control laws and regulations of the United States. Diversion contrary to United States law is prohibited. The Export Controlled Products, and the direct product thereof, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:
- 19.3.1. To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.
 - 19.3.2. To any person or entity listed on any United States government denial list, including but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists (www.bis.doc.gov/complianceand enforcement/liststocheck.htm), the U.S. Department of Treasury Specially Designated Nationals List (www.treas.gov/offices/enforcement/ofac/), and the U.S. Department of State Debarred List (<http://www.pmddtc.state.gov/compliance/debar.html>).
 - 19.3.3. To any entity if Customer knows, or has reason to know, the end use of the Export Controlled Product is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.
 - 19.3.4. To any entity if Customer knows, or has reason to know, that an illegal reshipment will take place.

Any questions regarding export or re-export of an Export Controlled Product should be addressed to Hexagon's Export Compliance Department, 305 Intergraph Way, Madison, Alabama, United States 35758 or at exportcompliance@intergraph.com.

20. TAXES

All charges under this Agreement are exclusive of each and every country's federal, provincial, state, municipal, or other governmental, withholding, excise, sales, use, value added or other taxes, tariffs, custom duties and importing fees ("Taxes"). Customer shall be liable for, and shall indemnify and hold Hexagon harmless from and against, any and all Taxes. Taxes shall expressly exclude any federal, state, municipal, or other governmental income taxes, franchise taxes, business license fees and other like taxes measured by Hexagon's income, capital and/or assets. The total invoice amount for charges under this Agreement is subject to increase by the amount of any Taxes which Hexagon is required to withhold, collect, or pay regarding the transactions under this Agreement so that Hexagon receives the full amount of the charges on Hexagon's invoices. Any certificate to exempt the Agreement from tax liability or other documentary evidence of statutory exemption shall be obtained by Customer at Customer's expense.

21. GENERAL

- 21.1. Third Party Providers. Hexagon reserves the right to provide Services through a third party provider.
- 21.2. Entire Agreement. The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. The Agreement supersedes any and all prior discussions and/or representations, whether written or oral, relating to the subject matter of the Agreement and no reference to prior dealings may be used to in any way modify the expressed understandings of the Agreement. Hexagon does not accept any contradictory or additional terms and conditions, even by accepting a purchase order referencing different terms and conditions. The Agreement may be amended only by a written instrument signed by authorized representatives of both parties, and cannot be amended by subsequent purchase order or writing received from Customer without the express

- written consent of Hexagon. Any reproduction of the Agreement made by reliable means (for example, photocopy or facsimile) will be deemed an original.
- 21.3. Order of Precedence. In the event of a conflict between the documents that form the Agreement, the order of precedence will be as follows: (i) any addenda executed by Hexagon and Customer, with the latest addendum taking precedence over any earlier addenda; (ii) the Quote; and (iii) these Terms and Conditions.
- 21.4. Severability. Whenever possible, each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. However, if any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Agreement.
- 21.5. Headings. The various headings in these Terms and Conditions are inserted for convenience only and shall not affect the meaning or interpretation of these Terms and Conditions or any section or provision of these Terms and Conditions.
- 21.6. No Waiver. Any failure by either party to enforce performance of the Agreement shall not constitute a waiver of, or affect said party's right to avail itself of, such remedies as it may have for any subsequent breach of the terms of the Agreement.
- 21.7. Notices. Any notice or other communication ("Notice") required or permitted under the Agreement shall be in writing and either delivered personally or sent by overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent. A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this Agreement commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given. Hexagon's address for Notices is Hexagon Safety & Infrastructure, 305 Intergraph Way, Madison, Alabama 35758, Attn: Legal Department, 256-730-2333.
- 21.8. Assignment. Neither party shall have the right to assign any of its rights nor delegate any of its obligations under this Agreement without the prior written consent of the other party, except that Hexagon may assign its rights and obligations under this Agreement, without Customer's approval, to (i) an entity which acquires all or substantially all of the assets of Hexagon or the Hexagon division providing a product or service under this Agreement; (ii) an entity which acquires all or substantially all of the Software Products or product line assets subject to this Agreement; or (iii) any subsidiary, affiliate or successor in a merger or acquisition of Hexagon. Any attempt by Customer to sublicense, assign or transfer any of Customer's rights or obligations under this Agreement, except as expressly provided in this Agreement, is void.
- 21.9. Force Majeure. Except for payment obligations under the Agreement, neither party shall be liable for any failure to perform or observe any of its obligations under this Agreement for as long as and to the extent that such performance is prevented or hindered by any circumstances beyond its reasonable control. By way of example, and not limitation, such causes may include acts of God or public enemies; labor disputes; acts of local, state, or national governments or public agencies; utility or communications failure; fire; flood; epidemics; riots; or strikes. The time for performance of any right or obligation delayed by such events will be postponed for a period equal to the delay. If, however, a party is subject to a force majeure that endures for more than sixty (60) calendar days, the other party has a right to terminate the Agreement upon providing thirty (30) calendar days prior written notice to the party subject to the force majeure.
- 21.10. Governing Law. This Agreement shall for all purposes be construed and enforced under and in accordance with the laws of the State of Alabama and shall be deemed to have been accepted in Madison, Alabama, United States. The parties agree that any legal

action or proceeding relating to this Agreement shall be instituted in the Circuit Court for Madison County, Alabama, or the United States District Court for the Northern District of Alabama, Northeastern Division. The parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceedings. This Agreement shall not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

- 21.11 Waiver of Jury Trial. Hexagon and Customer each hereby waive, to the fullest extent permitted by applicable law, any right either may have to a trial by jury for any legal proceeding arising, directly or indirectly, out of or relating to this Agreement.
- 21.12 Injunctive Relief; Cumulative Remedies. Customer acknowledges and agrees that a breach of the Agreement by Customer could cause irreparable harm to Hexagon for which monetary damages may be difficult to ascertain or may be an inadequate remedy. Customer agrees that Hexagon will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any breach of the Agreement by Customer, and Customer expressly waives any objection that Hexagon has or may have an adequate remedy at law with respect to any such breach. The rights and remedies set forth in this Agreement are cumulative and concurrent and may be pursued separately, successively or together.
- 21.13 Attorneys' Fees and Costs. In the event of any legal proceeding arising out of or relating to this Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs for all such legal proceedings, including for trial and all levels of appeal.
- 21.14 Governing Language. The controlling language of this Agreement is English. If Customer has received a translation into another language, it has been provided for Customer's convenience only.
- 21.15 Survival. The provisions of the Agreement which require or contemplate performance after the expiration or termination of the Agreement shall be enforceable notwithstanding said expiration or termination.

SGI-10012015



Commission Agenda Report

City of Kalamazoo

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

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

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

PREPARED BY: Ryan M. Russell, Senior Civil Engineer

DATE: 11/21/2016

SUBJECT: Portage Creek Trail Bid Ref #968-54-033

RECOMMENDATION

It is recommended that the City Commission approve a contract with Nashville Construction Company in the amount of \$432,551.23 for the construction of the Portage Creek Trail, and authorize the City Manager to sign all related documents.

BACKGROUND

It has long been planned to construct a trail to provide a north and south connection from the Kalamazoo River Valley Trail through the City of Kalamazoo and connecting to the City of Portage. This facility was included in the City of Kalamazoo's 1999 Non-motorized Plan. Such a facility would allow residents and visitors a scenic route to travel across the City and would provide connection to many other non-motorized facilities and locations of interest.

In 2014, the City of Kalamazoo's Department of Parks and Recreation applied for and was awarded Department of Natural Resources (DNR) trust funds for a portion of this project. This section of the Portage Creek Trail from Walnut Street to Lake Street was designed by the Department of Public Services. Staff collaborated and coordinated with the Departments of Parks and Recreation and Community Planning and Development for planning and funding.

Construction bids were received on October 4, 2016 with the low bidder being Nashville Construction. Nashville Construction is a quality contractor with experience in the trail way construction. The City of Kalamazoo has utilized them on similar projects in the past and is pleased with their workmanship.

COMMUNITY RESOURCES CONSULTED

The City worked closely with the Kalamazoo River Valley Trail, Department of Natural Resources, and Kalamazoo Valley Community College.

FISCAL IMPACT

Estimated Cost:

Construction	\$432,551.23
Engineering and Contingency:	<u>\$ 25,000.00</u>
Total:	\$457,551.23

Funding	
Department of Natural Resources	\$300,000.00
2016 General Fund Capital Improvement	<u>\$157,551.23</u>
Total	\$457,551.23

ALTERNATIVES

The alternative of not approving this contract is not recommended as it would delay the project and may impact the ability to secure similar DNR trust funding in the future.

ATTACHMENTS:

Type	Description
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	Aerial Photo Bid Results Summary
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BID RESULTS SUMMARY

PROJECT: Portage Creek Trail Project

DATE: November 29, 2016

BIDDERS SOLICITED: 46

BIDDERS RESPONDED: 4

MBE/WBE BIDS SOLICITED: 8

MBE/WBE BIDDERS RESPONDED: 0

BID REFERENCE NO: 968-54-033

MBE/WBE AWARDED: No

ISSUE DATE: August 24, 2016

BID OPENING: October 4, 2016

APPROVAL REQUIRED: City Commission

FUNDED BY: City & Parks Foundation

<u>BIDDERS</u>	<u>AMOUNT BID</u>	<u>LOCATION</u>
Nashville Construction	\$ 432,551.23	Nashville, MI
M & K Construction	\$ 460,525.58	City
Peters Construction Co.	\$ 581,838.85	City
Brenner Excavating	\$ 590,883.65	Hopkins, MI

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



Melissa Fuller
Purchasing Agent



Commission Agenda Report

City of Kalamazoo

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

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

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

PREPARED BY: Brianna Clawson, Support Services Division Manager

DATE: 11/16/2016

SUBJECT: Term Contract for Gasoline and Diesel Fuel

RECOMMENDATION

It is recommended that the City Commission approve a one-year term contract for gasoline and diesel fuel with Kalamazoo Oil, Inc. for an amount not to exceed \$591,107.

BACKGROUND

The City of Kalamazoo and Kalamazoo County participated in a cooperative sealed bid purchase of gasoline and diesel fuel. A one year contract was awarded to Kalamazoo Oil, Inc. as a result of that bidding process. If approved the term contract will expire December 31, 2017.

Since the petroleum market is continually changing, the contract was structured to obtain a firm and competitive price which stays current with the market by bidding the margin charged by the supplier. The margin includes the supplier's cost and profit to deliver the fuel to the City's storage site. The margin is added to the regional refinery's rack price, which fluctuates with the marketplace. The refinery provides a verification of the rack price with each shipment of fuel.

The City purchases fuel in bulk quantities ranging from 250 gallons to 6,000 gallons and dispenses them to City vehicles and equipment. A contract award with Kalamazoo Oil is recommended for approval. Kalamazoo County will be making a separate award for their gasoline and diesel fuel requirements.

COMMUNITY RESOURCES CONSULTED

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

FISCAL IMPACT

Funds are being budgeted in the proposed 2017 budget and fuel will be purchased on an as-needed basis. As it is dispensed, the fuel is charged to the individual department's expense budget accounts. The proposed contract amount is estimated based upon the current prices and historic usage.

ALTERNATIVES

City staff could purchase gasoline and diesel fuel at commercial stations. This alternative is not recommended because the City would lose quantity discounts and would have to apply for sales and fuel tax refunds.

ATTACHMENTS:

	Type	Description
	Bid	
▣	Results	Bid Results Summary
	Summary	

BID TABULATION - GASOLINE AND DIESEL FUEL

October 13, 2016, 2:00 PM

ITEM	Corrigan Oil Company	Kalamazoo Oil Company	Knapp Energy, Inc.	Mansfield Oil Co. of Gainesville Inc.	RKA Petroleum Companies	Van Manen Petroleum Group
GASOLINE - VIA TRUCK TRANSPORT						
No Lead 87 octane, rack price	\$ 1.4700	\$ 1.4265	\$ 1.4265	\$ 1.4250	\$ 1.4430	\$ 1.4175
Markup	\$ 0.0905	\$ 0.0490	\$ 0.0620	\$ 0.0703	\$ 0.0565	\$ 0.0640
Delivered price	\$ 1.5605	\$ 1.4755	\$ 1.4885	\$ 1.4953	\$ 1.4995	\$ 1.4815
<i>For orders under 7,000 add additional \$0325</i>					\$ 1.5320	
GASOLINE - VIA TANK WAGON						
No Lead 87 octane, rack price	\$ 1.4700	\$ 1.4265	\$ 1.4265	\$ 1.4250	\$ 1.4430	\$ 1.41750
Markup	\$ 0.2105	\$ 0.0990	\$ 0.1100	\$ 0.1955	\$ 0.3305	\$ 0.1950
Delivered price	\$ 1.6805	\$ 1.5255	\$ 1.5365	\$ 1.6205	\$ 1.7735	\$ 1.6125
#2 DIESEL FUEL - VIA TRUCK TRANSPORT						
Rack price	\$ 1.6790	\$ 1.6530	\$ 1.6530	\$ 1.6464	\$ 1.6745	\$ 1.6423
Markup	\$ 0.0905	\$ 0.0490	\$ 0.0620	\$ 0.0703	\$ 0.0567	\$ 0.0640
Delivered price	\$ 1.7695	\$ 1.7020	\$ 1.7150	\$ 1.7167	\$ 1.7312	\$ 1.7063
<i>For orders under 7,000 add additional \$0325</i>					\$ 1.7637	
#2 DIESEL FUEL - VIA TANK WAGON						
Rack price	\$ 1.6790	\$ 1.6530	\$ 1.6530	\$ 1.6464	\$ 1.6745	\$ 1.6423
Markup	\$ 0.2105	\$ 0.0990	\$ 0.1100	\$ 0.1955	\$ 0.3307	\$ 0.1950
Delivered price	\$ 1.8895	\$ 1.7520	\$ 1.7630	\$ 1.8419	\$ 2.0052	\$ 1.8373
FUEL ADDITIVES						
Unl Gas Additive Product Name	Provided at rack	Oxi - Boost	Schaeffer's Soy Ultra	Valvtect	Val-Tek	NA
Unleaded gasoline, per gallon	\$ -	\$ 0.0150	\$ 0.0200	\$ 0.0350	\$ 0.0210	NA
Ratio of additive	Proprietary	1:2500	1:2000	1:3200	1:1200	NA
Diesel Additive Product Name	Valvtect	Pro-Tec	Schaeffer's Arctic Shield	Clean365 and CFI 1452	Innospec	Innospec
Diesel fuel, per gallon	\$ 0.0200	\$ 0.0125	\$ 0.0275	\$ 0.0225	\$ 0.0210	\$ 0.0150
Ratio of additive	1:3000	1:1500	1:1500	1:1500	1:1500	1:1500
Returned Bidders Questionnaire?	Yes	Yes	Yes	Yes	Yes	Yes
Submitted posted rack price for 10/11/16?	Yes	Yes	Yes	Yes	Yes	Yes
Submitted Extended Bid Pricing page?	No	Yes	Yes	Yes with Footnote	Yes	Yes
Returned 3 complete bid packages?	Yes	Yes	Yes	Yes	Yes	Yes
Acknowledged Addendum 1?	Yes	Yes	Yes	Yes	Yes	Yes
Acknowledged Addendum 2?	Yes	Yes	Yes	Yes	Yes	Yes



Commission Agenda Report

City of Kalamazoo

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

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

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

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

DATE: 11/29/2016

SUBJECT: Proposed Amendment to Water Ordinance

RECOMMENDATION

It is recommended that the City Commission offer for first reading: An ordinance to amend certain sections of Chapter 38 of the Kalamazoo code to change the rates charged for water service. The ordinance amends Chapter 38 of the Kalamazoo Code of Ordinances to increase water service revenues by 8.0% across the board, effective January 1, 2017.

BACKGROUND

As part of the 2017 Water System Budget, the City Administration recommended an overall system revenue increase of 8.0%. Approval and implementation of this increase will allow the Water Utility to continue to operate and maintain the system, and make capital improvements as outlined in the 2017 budget. Also, the new rates will work to improve reserve funds, debt coverage ratios and allow for the continued stabilization of the Water Utility's financial position. Continued annual rate increases above inflationary rates are needed to continue to support system wide capital needs and financial health over the next several years.

The Foster Group was commissioned to complete an analysis of overall 2017 revenue requirements. It was recommended that an 8% overall system revenue increase be implemented, the actual rate increase seen by each customer class will vary.

COMMUNITY RESOURCES CONSULTED

A water and wastewater infrastructure needs work session was held on November 28, 2016. This work session was open to the public and provided an opportunity for public comment.

This is the first reading of the proposed ordinance amendment. The City Commission by rule has established that an ordinance amendment will be held two weeks after the first reading to allow for public comment.

FISCAL IMPACT

The 2017 water budget and capital improvement plan was developed with the revenue increases included of approximately \$1.05 million.

ALTERNATIVES

The City Commission may deny or delay this request. However, if the increase is delayed or not approved, a budget adjustment equal to the loss in revenues would be required. Delaying or denying this request is not recommended.

ATTACHMENTS:

Type	Description
Ordinances	Ordinance

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. 1920

**AN ORDINANCE TO AMEND SECTION 38-32 OF THE KALAMAZOO CITY CODE TO
CHANGE THE RATES CHARGED FOR WATER SERVICE**

THE CITY OF KALAMAZOO ORDAINS:

1. **Section 1.** Sec. 38-32 of the Kalamazoo Code is hereby amended to read as follows:

“Sec. 38-32. **Rate schedules established.**

The charge for water service furnished by the city shall be the sum of the service charge, dependent upon the size of the meter, plus the commodity charge, dependent upon the amount of water used, and the applicable customer class schedules as set forth below:

(1) **SCHEDULE A** (Quarterly)

Service Charge (per quarter)

<u>Size of Meter</u> (inches)	<u>City</u>	<u>Outside City</u>
5/8-3/4	\$21.98	30.19
1	29.18	40.67
1-1/2	36.39	51.16
2	56.19	80.01

(2) **SCHEDULE B** (Monthly)

Service Charge (per month)

<u>Size of Meter</u> (inches)	<u>City</u>	<u>Outside City</u>
5/8-3/4	9.97	12.70
1	12.37	16.20
1-1/2	14.77	19.70
2	21.37	29.31
3	69.99	100.12
4	88.01	126.34
6	130.03	187.52
8	178.05	257.45

(3) **COMMODITY CHARGES, RATES SCHEDULES A & B**

Rate Per Cubic Meter (on all water used)

<u>Customer Class</u>	<u>City</u>	<u>Outside City</u>
Single Family	0.292	0.598
Multi Family	0.264	0.401
Commercial	0.294	0.449

(4) **FIRE PROTECTION, RATE SCHEDULE C (Monthly)**

Demand Charge (monthly)

<u>Size of Detector Check (inches)</u>	<u>City</u>	<u>Outside City</u>
4	23.32	36.64
6	29.08	44.73
8	40.59	60.65
10	86.45	121.74

Demand Charge (quarterly)

<u>Size of Detector Check (inches)</u>	<u>City</u>	<u>Outside City</u>
4	33.60	59.53
6	38.98	83.79
8	53.77	131.55
10	162.68	314.79

Commodity Charge (per month) Per Cubic Meter

	<u>City</u>	<u>Outside City</u>
First 15 m ³ /mo.	0.288	0.442
Over 15 m ³ /mo.	0.865	1.325

Fire hydrants: \$43.20 per year on each private fire hydrant maintained in service.

(5) **LAWN SPRINKLING & SEASONAL USE, SCHEDULE D**

Monthly and quarterly service charges under this schedule are based upon meter size and are the same as in Schedules A & B. Minimum annual service charges are equal to four times the quarterly service charge.

Commodity Charge. Rate per cubic meter on all water used.

City	\$0.455 per cubic meter
Outside City	\$0.932 per cubic meter

The rates established by this ordinance amendment shall go into effect for water bills rendered on or after January 01, 2017.

REPEALER

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

SEVERABILITY

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

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on December 5, 2016. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267,1976). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted, and authenticated by the Mayor and City Clerk as required by the Charter of said City.

Bobby J. Hopewell, Mayor

Scott A. Borling, City Clerk



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: Laura Lam, Director

PREPARED BY: Rob Bauckham Senior Development Planner

SUBJECT: Approval of Neighborhood Enterprise Zone Certificates

RECOMMENDATION

It is recommended that the City Commission adopt a resolution to approve six, new Neighborhood Enterprise Zone Certificates (NEZs) in the Vine neighborhood, transfer two previously-approved NEZs, and revoke one previously-approved NEZ.

BACKGROUND

On September 29, 2008, the Kalamazoo City Commission created two NEZs; one homestead NEZ in the Vine neighborhood, and one new construction NEZ in the Edison neighborhood. The program provides tax incentives for citizens to own and occupy homes in the NEZ and requires a financial investment by the owner toward improving the property. Within each zone, homeowners or builders are required to apply for a certificate for each property in order to obtain the tax benefits. All of the applications received by the city must be approved by the City Commission. The approval takes effect in the following tax year. For example, the applications that are received and approved this year (2016) will take effect on January 1, 2017. Applicants that receive approval can participate in the program for up to ten years.

The City Clerk has received six applications for new homestead NEZ certificates. All of the properties are located in the Vine neighborhood. The new NEZ applications are identified as follows: 829 W. Vine Street (SaraJo Shipley), 913 Osborne Street (Jeremy Lynn Terpening), 715 W. Walnut Street (Judd Easton), 930 Minor Avenue (Mercedes Tubino Blanco), 917 Oak Street (Maleeha Elsadr), and 917 S. Park Street (Katherine Olsen). Each of the property owners purchased their respective property after September 29, 2008 and use it as their principal residence. Applicants for the homestead NEZ program are required to commit to complete a minimum of \$500 of improvements to the home within the first three years after receiving approval. Each of the applicants have agreed to spend at least that amount on the homes. If approved, these certificates would expire on December 30, 2026.

The City Clerk also received two applications to transfer existing NEZ certificates for 817 Wheaton Avenue to Zachary C. Rich, and for 812 Oak Street to be transferred to Landon Cole Elzinga. The original certificates were issued to the prior owners of the respective properties.

The properties were sold to the current owners, and the current owners are applying to have the NEZ certificates transferred to them. Both new owners have agreed to use the properties as their principal residences and to spend at least \$500 on renovations to the houses in the next three years. If approved, these certificates would expire on December 30, 2021.

The City Clerk is additionally recommending the revocation of a previously-approved NEZ certificate for 423 Davis Street. The original NEZ certificate was approved for the property in 2013; however, the owner is delinquent on the property taxes. Pursuant to MCL 207.781, the qualified assessing authority for the jurisdiction has the authority to revoke NEZ certificates for such cause with approval from the governing body of the jurisdiction.

COMMUNITY RESOURCES CONSULTED

As part of the creation of the NEZ program for Kalamazoo, staff met with a work group that included members of the Historic District Commission, Planning Commission, Dangerous Buildings Board, and Community Development Act Advisory Committee. This group discussed the feasibility and benefits of implementing the NEZ program in the city and provided its support for it. In addition, staff had conversations with the neighborhoods that were slated to be impacted by the NEZ program and provided several formal presentations to the neighborhood boards. The City Treasurer, Assessor, and other relevant city staff were included in the planning activities and were part of the final decision-making process on the scope of the program for Kalamazoo. The City Commission also held a public hearing to discuss the creation of the NEZ and provided its support for the program.

FISCAL IMPACT

For new homestead NEZ certificates, the certificate is in effect for 10 years and represents a reduction of 50% of the city taxes for the home. Assuming static housing values and the city's current millage rate, the city would forego \$148.96 each year for the next ten years in city taxes for 829 W. Vine Street, \$192.59 each year for 913 Osborne Street, \$260.74 each year for 715 W. Walnut Street, \$111.72 each year for 930 Minor Avenue, \$207.48 each year for 917 Oak Street, and \$270.26 each year for 917 S. Park Street if the NEZ requests are approved. The advantage is that these six homes will be occupied by home owners for at least the next ten years in a neighborhood that has been predominantly renter-occupied. The owners have also agreed to make improvements to the homes within the next three years.

As of 2016, the City of Kalamazoo is foregoing approximately \$7,874 a year for the 38 parcels with active NEZ certificates. Utilizing the proposed reduced operating millage, the City of Kalamazoo would forego approximately \$6,029 a year based on the 43 NEZ parcels estimated in 2017.

ALTERNATIVES

The City Commission has the option of denying the six applications for the new homestead NEZ certificates in the Vine neighborhood, the two applications to transfer previously-approved NEZ certificates, and the application to revoke the previously-approved NEZ certificate due to delinquent taxes. It is recommended that the request be approved for each property as presented.

ATTACHMENTS:

Type	Description
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CITY OF KALAMAZOO, MICHIGAN

RESOLUTION NO.

**A RESOLUTION APPROVING SIX NEW APPLICATIONS FOR HOMESTEAD
NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATES PURSUANT TO PUBLIC
ACT 147 OF 1992, TWO TRANSFERS OF PREVIOUSLY-APPROVED
CERTIFICATES, AND ONE REVOCATION OF A PREVIOUSLY-APPROVED
CERTIFICATE**

Minutes of a regular meeting of the City Commission of the City of Kalamazoo held on _____, 2016 at 7:00 o'clock p.m., local time at the City Hall.

PRESENT, Commissioners:

ABSENT, Commissioners:

Recitals:

A. The Kalamazoo City Commission adopted the Vine Neighborhood Homestead Neighborhood Enterprise Zone on September 29, 2008 so that residents of the City of Kalamazoo would have the potential to take advantage of residential tax abatements while also providing incentives to encourage neighborhood revitalization; and

B. The City of Kalamazoo is in receipt of six applications for Homestead Neighborhood Enterprise Zone Certificates for 829 W. Vine Street (SaraJo Shipley), 913 Osborne Street (Jeremy Lynn Terpening), 715 W. Walnut Street (Judd Easton), 930 Minor Avenue (Mercedes Tubino Blanco), 917 Oak Street (Maleeha Elsadr), and 917 S. Park Street (Katharine Olsen), who purchased the respective homes in the Vine Neighborhood Enterprise Zone after September 29, 2008 and are living at the above-listed addresses as their principal residences; and

C. The City of Kalamazoo is also in receipt of two applications to transfer existing Homestead Neighborhood Enterprise Zone Certificates for 817 Wheaton Avenue (Zachary C. Rich) and 812 Oak Street (Landon Cole Elzinga), who purchased the homes in the Vine Neighborhood Enterprise Zone after September 29, 2008 and are living at the properties as their principal residence; and

D. The applicants have indicated that they will invest at least \$500 in property upgrades for their respective homes within the first three years of their residence in the homestead properties; and

E. The City Clerk's office is also recommending the revocation of a previously-approved Homestead Neighborhood Enterprise Zone Certificate for 423 Davis Street due to delinquent property taxes.

THEREFORE, IT IS RESOLVED, that 829 W. Vine Street (parcel number 06-21-259-106 for Sara Jo Shipley), 913 Osborne Street (parcel number 06-22-166-001 for Jeremy Lynn Terpening), 715 W. Walnut Street (parcel number 06-21-241-421 for Judd Easton), 930 Minor Avenue (parcel number 06-21-274-003 for Mercedes Tobino Blanco), 917 Oak Street (parcel number 06-21-292-010 for Maleeha Elsadr), and 917 S. Park Street (parcel number 06-22-167-002 for Katharine Olsen) will each be awarded a Certificate of Neighborhood Enterprise Zone for ten (10) years (2017 to 2026), and 817 Wheaton Avenue (parcel numbers 06-21-409-045 & 06-71-015-001 for Zachary C. Rich) and 812 Oak Street (parcel numbers 06-21-281-002 & 06-71-011-003 for Landon Cole Elzinga) will each be awarded a transfer of the Certificate of Neighborhood Enterprise Zone for five (5) years (2017 to 2021), allowing each of them to pay the reduced “Neighborhood Enterprise Zone Tax” until such time as:

1. The applicant no longer lives in the above listed address as his/her principal residence, or
2. The applicant is not current in payment of the Neighborhood Enterprise Zone Tax, or
3. Ten (10) years has elapsed from the time of the certificate issuance for the five new certificates, or five (5) years has elapsed from the time of the issuance of the two transferred certificates.

BE IT ALSO RESOLVED, that the previously-approved Neighborhood Enterprise Zone Certificate number 2013-005 for 423 Davis Street is hereby revoked due to delinquent property taxes.

The above resolution was offered by Commissioner _____ and supported by Commissioner _____/

AYES, Commissioners:

NAYS, Commissioners:

ABSTAIN, Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2016. Public notice was given and the meeting was conducted in full compliance with the Michigan Open Meetings Act (PA 267, 1976). Minutes of the meeting will be available as required by said Act.

Scott A. Borling, City Clerk



Commission Agenda Report

City of Kalamazoo

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

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

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

DATE: 11/21/2016

SUBJECT: Tax Anticipation Notes, Series 2017

RECOMMENDATION

It is recommended that the City Commission adopt the attached resolution authorizing the issuance of Tax Anticipation Notes (TANs) in the amount of \$3,000,000 for fiscal year 2017.

BACKGROUND

Each year, the City issues Tax Anticipation Notes to provide the General Fund with sufficient cash flow until property taxes are due July 1. The need for borrowing is due to the difference in timing of the City's fiscal year, which begins January 1, and the property tax year, which begins July 1.

Historical note: thanks to the change in the tax collection calendar enacted by Michigan Public Act 512 of 2009, the City has been able to reduce TANs borrowing from \$6 million to \$3 million per year, beginning with 2010. This law allows the City to require timely summer tax payments by December 31st of each year, and further for the City to access the County Treasurer's delinquent tax collection settlement process.

COMMUNITY RESOURCES CONSULTED

No community resources were consulted.

FISCAL IMPACT

There will be issuance and interest costs associated with this issue. The notes shall bear interest at the rate or rates determined on public sale, thereof, but not to exceed the maximum rate permitted by law. However, interest earnings on the note proceeds partially offset these costs. Associated expenses and interest earnings are included in the Proposed FY 2017 General Fund budget.

ALTERNATIVES

If Tax Anticipation Notes are not issued, sufficient cash will not be available to meet ongoing operational expenditures and large purchases and transfers would have to be postponed to the second half of the year.

An alternative to TANs is to borrow from others funds within the City. Some inter-fund borrowing will occur during the first half of the fiscal year; however sufficient cash is not available in the other funds to meet all of the cash

needs of the General Fund prior to property tax collections. Staff advises against this alternative.

Another alternative is to increase the General Fund cash reserves. This would require a significant reduction in services and/or capital projects in the FY 2017 budget, and staff advises against this alternative.

ATTACHMENTS:

Type	Description
	Resolution 2017 TANs Authorizing Resolution

RESOLUTION _____

RESOLUTION AUTHORIZING ISSUANCE OF TAX ANTICIPATION NOTES, SERIES 2017

**CITY OF KALAMAZOO
COUNTY OF KALAMAZOO, MICHIGAN**

Minutes of a Regular Meeting of the City Commission of the City of Kalamazoo, County of Kalamazoo, Michigan (the "City"), held in the City Hall, on the 5th day of December, 2016, at 7:00 o'clock p.m., Eastern Standard Time.

PRESENT: Commissioners: _____

ABSENT: Commissioners _____

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

WHEREAS, it is hereby determined that it is necessary to borrow the sum of Three Million Dollars (\$3,000,000), in anticipation of the collection of the unpaid operating taxes for the fiscal year of the City beginning January 1, 2017 (the "Operating Taxes") which Operating Taxes are first due and payable on July 1, 2017 for the purpose of obtaining funds to meet operating expenses of the City; and

WHEREAS, Act No. 34 of the Public Acts of 2001, as amended, authorizes the borrowing of money in anticipation of the collection of the unpaid Operating Taxes for the current fiscal year in an amount not to exceed fifty percent (50%) of the operating tax levy for the preceding fiscal year when the Operating Taxes for the current fiscal year are not as yet due and payable; and

WHEREAS, the amount included for Operating Taxes in the budget for the fiscal year ending December 31, 2016 was \$28,656,467.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Notes. The City shall borrow for the above purpose the sum of Three Million Dollars (\$3,000,000) and shall issue its general obligation notes in anticipation of the collection of the Operating Taxes for the fiscal year beginning January 1, 2017.

2. Note Terms. Notes of the City designated "Tax Anticipation Notes, Series 2017 (Limited Tax General Obligation)" (the "Notes") are authorized to be issued and shall bear interest at the rate or rates determined on public sale thereof, but not to exceed the maximum rate permitted by law, be dated as of the date of delivery, and shall be due and payable December 1, 2017, which is the estimated time of collection of a sufficient amount of the Operating Taxes for the fiscal year beginning January 1, 2017, to pay the Notes in full. The Notes shall be payable at The Bank of New York Mellon Trust Company, N.A., Detroit, Michigan, who shall serve as paying and transfer agent for the Notes. The Notes shall be

in the denomination of \$5,000, or multiples thereof, as shall be designated by the original purchaser of the Notes. The Notes may be issued in book-entry-only form through The Depository Trust Company in New York, New York ("DTC"), and the City Manager, Director of Management Services and Chief Financial Officer, and City Clerk are each authorized to execute such custodial or other agreement with DTC as may be necessary to accomplish the issuance of the Notes in book-entry-only form and to make such changes in the Notes as may be required to accomplish the foregoing.

3. Set Aside of Tax Collections. From the first collections of the Operating Taxes for the fiscal year beginning January 1, 2017 there shall be set aside in a separate depository account (the "Note Repayment Fund" or the "Fund") a portion of each dollar which is not less than 125% of the percentage that the principal amount of the Notes bears to the amount of the Operating Taxes, to be used for the payment of the principal of and interest on the Notes and any other notes hereafter issued in anticipation of said taxes, and until the amount set aside shall be sufficient for such payments, collections of the Operating Taxes shall be used for no other purpose. On November 1, 2017 to the extent the amount in the Fund is not sufficient to pay the principal of and interest on the Notes and any notes of equal standing in full, then, commencing November 1, 2017, the first collections of Operating Taxes shall be set aside, in full, until the amount set aside in the Note Repayment Fund is sufficient to pay the principal and interest on the Notes and any notes of equal standing in full. The right is reserved to issue additional notes of equal standing as to the Operating Taxes pledged for payment of the Notes with the Notes authorized by this resolution, subject to the limitations fixed by law.

4. Limited Tax Pledge; Defeasance. The full faith and credit of the City is hereby irrevocably pledged for payment of principal of and interest on the Notes and in case of the insufficiency of the Operating Taxes pledged for the payment thereof, the City shall pay the Notes from any funds legally available therefor, and, if necessary, levy sufficient taxes on all taxable property in the City for the payment thereof within applicable constitutional, statutory and charter limitations.

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

5. Execution of Notes. The Mayor and City Clerk of the City shall execute the Notes on behalf of the City either by manual or facsimile signatures, and the City's seal or a facsimile thereof shall be imprinted or printed thereon, and the executed Notes shall be delivered to the Director of Management Services and Chief Financial Officer who shall be authorized to deliver the Notes to the purchaser thereof upon the receipt of the purchase price therefor. Printed Notes may be executed with facsimile signatures of the foregoing officers, in which case the Notes shall not be valid unless authenticated in a manner approved by the Director of Management Services and Chief Financial Officer or the City Manager. The foregoing officers are hereby authorized to execute and deliver a temporary note or notes and exchange, when available, final printed notes therefor at the request of the original purchaser.

6. Notice of Sale. The City Manager or Director of Management Services and Chief Financial Officer shall cause notice of sale thereof to be published in accordance with law in ***The Bond Buyer***, a publication printed in the English language and which carries, as a part of its regular service, notices of sale of municipal bonds and notes. Said notice of sale shall be in substantially the following form:

OFFICIAL NOTICE OF SALE
\$3,000,000
CITY OF KALAMAZOO
COUNTY OF KALAMAZOO
STATE OF MICHIGAN

TAX ANTICIPATION NOTES, SERIES 2017
(LIMITED TAX GENERAL OBLIGATION)

SEALED, FAXED OR ELECTRONIC BIDS: Bidders may submit bids for the purchase of the above Notes as follows:

SEALED BIDS will be received by the undersigned at the office of the City Clerk, located at 241 W. South Street, Kalamazoo, Michigan 49007-4796 on Wednesday, the 4th day of January, 2017 until 11:30 a.m., Eastern Standard Time at which time and place said bids will be publicly opened and read.

SEALED BIDS will also be received on the same date and until the same time at the office of the Municipal Advisory Council of Michigan (the "MAC"), Buhl Building, 535 Griswold, Suite 1850, Detroit, Michigan 48226, when simultaneously, the bids will be opened and read.

FAXED BIDS: Signed bids may be submitted by fax to the City at fax number (269) 337-8448, attention City Clerk, or to the MAC at (313) 963-0943; provided that faxed bids must arrive before the time of sale and the bidder bears all risks of transmission failure.

ELECTRONIC BIDS will also be received on the same date and until the same time by Bidcomp/Parity as agent of the undersigned. Further information about Bidcomp/Parity, including any fee charged, may be obtained from Bidcomp/Parity, Anthony Leyden or CLIENT SERVICES, 1359 Broadway, Second Floor, New York, New York 10010, (212) 849-5021. IF ANY PROVISION OF THIS NOTICE OF SALE SHALL CONFLICT WITH INFORMATION PROVIDED BY BIDCOMP/PARITY, AS THE APPROVED PROVIDER OF ELECTRONIC BIDDING SERVICES, THIS NOTICE SHALL CONTROL.

Bidders may choose any means or location to present bids but a bidder may not present a bid in more than one location or by more than one means.

NOTE DETAILS: The Notes will be dated as of the date of delivery, will mature December 1, 2017, and will bear interest from their issue date payable on December 1, 2017 at a rate not exceeding 6% per annum, fixed by the bids therefor, expressed in multiples of 1/8 or 1/20 of 1%. The Notes will be in denominations of \$5,000 or multiples or combinations thereof, designated by the original purchaser of the Notes. No proposal for the purchase of less than all of the Notes or at a price less than 99% of their par value will be considered.

Notes of this issue will not be subject to redemption prior to maturity.

PAYING AGENT: Both principal and interest shall be payable at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., Detroit, Michigan. The Notes will be transferred only upon the registration books of the Issuer kept by the paying agent.

BOOK-ENTRY ONLY: The Notes will be issued in book-entry only form as one fully registered note and will be registered in the name of Cede & Co., as noteholder and nominee for The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Notes. Purchase of the Notes will be made in book-entry-only form, in the denomination of \$5,000 or any multiple thereof. Purchasers will not receive certificates representing their interest in Notes purchased. The book-entry-only system is described further in the preliminary Official Statement for the Notes.

PURPOSE AND SECURITY: The Notes are issued in anticipation of operating taxes due and payable on July 1, 2017. From the first collections of the operating taxes, the City is required to set aside in a separate depository account a portion of each dollar which is not less than 125% of the percentage that the principal amount of the Notes bears to the amount of the operating taxes until the amount so set aside is sufficient for payment of principal and interest on the Notes herein offered and any additional notes of equal standing hereafter issued in anticipation of said taxes. In case of the insufficiency of the taxes pledged for the payment thereof the City is required to pay the Notes from any funds legally available therefor including subsequent tax levies of the City. The City does not have the power to levy taxes for the payment of the Notes in excess of its constitutional, statutory and charter tax rate limitations. The rights or remedies of noteholders may be affected by bankruptcy laws or other creditor's rights legislation now existing or hereafter enacted.

ADDITIONAL NOTES: The City has reserved the right to issue additional notes of equal standing with the Notes offered herein, subject to the limitations provided by law.

GOOD FAITH: A good faith deposit in the form of a certified or cashier's check drawn upon an incorporated bank or trust company, or wire transfer, in the amount of \$60,000 payable to the order of the Treasurer of the City will be required of the successful bidder. The successful bidder is required to submit its good faith deposit to the City as instructed by the City not later than Noon, prevailing Eastern Time, on the next business day following the sale. The good faith deposit will be applied to the purchase price of the Notes. In the event the purchaser fails to honor its accepted bid, the good faith deposit will be retained by the City. No interest shall be allowed on the good faith check. The good faith check of the successful bidder will be cashed and payment for the balance of the purchase price of the Notes shall be made at the closing.

AWARD OF NOTES – TRUE INTEREST COST: The Notes will be awarded to the bidder whose bid produces the lowest true interest cost determined in the following manner: the lowest true interest cost will be the single interest rate (compounded on December 1, 2017) necessary to discount the debt service payments January 25, 2017 in an amount equal to the price bid, excluding accrued interest. Each bidder shall state in its bid the true interest cost to the City, computed in the manner specified above.

LEGAL OPINION: Bids shall be conditioned upon the approving opinion of Miller, Canfield, Paddock and Stone, P.L.C. attorneys of Detroit, Michigan ("Note Counsel"), which will be furnished without expense to the purchaser of the Notes at the delivery thereof. The fees of Note Counsel for services rendered in connection with such approving opinion are expected to be paid from note proceeds. Except to the extent necessary to issue their approving opinion as to the validity of the above Notes and the exemption of the Notes and the interest thereon from taxation, Note Counsel has made no inquiry of any City officials or other persons as to any financial information, documents, statements or

materials and has not independently verified any such financial information, documents, statements or materials that have been or may be furnished in connection with the authorization, issuance or marketing of the Notes, and accordingly will not express any opinion with respect to the accuracy or completeness of any such financial information, documents, statements or materials. In submitting a bid for the Notes, the bidder agrees to the representation of the City by Miller, Canfield, Paddock and Stone, P.L.C., as Note Counsel.

“NOT QUALIFIED TAX-EXEMPT OBLIGATIONS”: The City will not designate the Notes as “qualified tax-exempt obligations” for purposes of deduction of interest expense by financial institutions pursuant to the Internal Revenue Code of 1986, as amended.

TAX MATTERS: In the opinion of Miller, Canfield, Paddock and Stone, P.L.C., Note Counsel, under existing law, assuming compliance with certain covenants, interest on the Notes is excludable from gross income for federal income tax purposes as described in the opinion and the Notes and interest thereon are exempt from all taxation by the State of Michigan or by any taxing authority within the State of Michigan except inheritance and estate taxes and taxes on gains realized from the sale, payment or other disposition thereof. The successful bidder will be required to furnish, at delivery of the Notes, a certificate in a form acceptable to note counsel as to the “issue price” of the Notes within the meaning of Section 1273 of the Internal Revenue Code of 1986, as amended.

PRINTING AND DELIVERY OF NOTES: The City will furnish printed Notes with the legal opinion thereon at its expense. Notes will be delivered without expense to the purchaser through DTC in New York, New York. The City will furnish the purchaser with the usual closing documents including certificate that no litigation is pending affecting the right of the City to issue the Notes. Accrued interest to the date of delivery of the Notes shall be paid by the purchaser at the time of delivery. Payment for the Notes shall be made in immediately available funds.

FURTHER INFORMATION may be obtained from the City’s Financial Advisors, Robert W. Baird & Co, 1001 Bay Street, Traverse City, Michigan 49684. Telephone: (231) 993-8447, Fax: (231) 933-8448.

LIMITED CONTINUING DISCLOSURE: The City will agree in the awarding resolution to provide or cause to be provided, in accordance with the requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission a limited undertaking consisting only of timely notice of the occurrence of certain material events with respect to the Notes.

OFFICIAL STATEMENT: The City will provide the winning bidder with a reasonable number of final Official Statements within 7 business days from the date of sale so as to permit the underwriter to comply with the Rule. Additional copies of the official statement will be supplied by the City upon request and agreement to pay the cost of the additional copies. Requests for additional copies should be made to the City’s Financial Advisors listed above within 24 hours of the date and time of sale.

BIDDER CERTIFICATION: NOT “IRAN-LINKED BUSINESS” By submitting a bid, the bidder shall be deemed to have certified that it is not an “Iran-Linked Business” as defined in Act 517 Michigan Public Acts of 2012, being MCL 129.311 et. seq.

THE RIGHT IS RESERVED TO REJECT ANY OR ALL BIDS.

ENVELOPES: Containing the bids should be plainly marked "Proposal for Tax Anticipation Notes."

Scott A. Borling
City Clerk
City of Kalamazoo, Michigan

7. Tax Covenant. The City hereby covenants that it shall take all actions within its control necessary to maintain the exemption of the interest on the Notes from general federal income taxation (as opposed to alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended (the "Code"), including but not limited to, actions relating to the rebate of arbitrage earnings and the expenditure and investment of note proceeds and moneys deemed to be Note proceeds.

8. Official Statement; Qualification for Insurance; Ratings. The City Manager and Director of Management Services and Chief Financial Officer are each authorized to cause the preparation and circulation of a preliminary and final Official Statement with respect to the Notes; to procure qualification of the Notes for a policy of municipal note insurance; and to obtain ratings on the Notes.

9. Continuing Disclosure. The City agrees to enter into a continuing disclosure undertaking for the benefit of the holders and beneficial owners of the Notes in accordance with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission, and the City Manager and Director of Management Services and Chief Financial Officer are each hereby authorized to execute such undertaking prior to delivery of the Notes.

10. Adjustment of Note Terms; Authorization of Other Actions. The City Manager and Director of Management Services and Chief Financial Officer are each hereby authorized to adjust the final Note details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing are authorized to exercise the authority and make the determinations authorized pursuant to Section 315(1)(d) of Act 34, Public Acts of Michigan, 2001, as amended, including but not limited to, determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, designation as qualified tax-exempt obligations and other matters within the parameters described in this resolution. The City Manager and Director of Management Services and Chief Financial Officer are each authorized and directed to take all other actions necessary or advisable, and to make such other filings with any parties, including the Michigan Department of Treasury, to enable the sale and delivery of the Notes as contemplated herein.

11. Award of Sale of Notes. The City Manager and Director of Management Services and Chief Financial Officer are each hereby authorized on behalf of the City to award the sale of the Notes to the bidder whose bid meets the requirements of law and which produces the lowest true interest cost to the City computed in accordance with the terms of the Official Notice of Sale as published.

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

AYES: Commissioners: _____

NAYS: Commissioners: _____

RESOLUTION DECLARED ADOPTED.

Scott A. Borling, City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo, County of Kalamazoo, State of Michigan, at a regular meeting held on December 5, 2016, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Scott A. Borling, City Clerk

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Commission Agenda Report

City of Kalamazoo

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

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

REVIEWED BY: Jeff Hadley, Public Safety Chief

PREPARED BY: Detective Jonathan Schipper

DATE: 11/29/2016

SUBJECT: Small Wine Maker's License for Gonzo's Bigg Dogg Brewing Co.

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 Gonzo's Bigg Dogg Brewing Co. to obtain a Small Wine Making license.

BACKGROUND

The adoption of this resolution would allow Gonzo's Bigg Dogg Brewing Co. to manufacture or bottle not more than 50,000 gallons of wine in 1 calendar year.

Gonzo's Bigg Dogg Brewing Co. has been in operation since 2013 as a Micro Brewer of beer. There are six private financial investors in the business including Gregory Haner who runs the daily operations of the company. Gregory Haner desires to manufacture and sell hard cider at Gonzo's Bigg Dogg Brewing Co. In the State of Michigan hard cider is classified as a wine so in order for Gonzo's Bigg Dogg Brewing to manufacture and sell hard cider they need to obtain the wine making license.

Gonzo's Bigg Dogg Brewing Co. leases their current location and the property taxes are current. The Business Personal Property taxes for Gonzo's Bigg Dogg Brewing Company's October bill was paid late so they are carrying a delinquent balance that consists of a late payment penalty and interest associated with the late payment. This delinquent balance is under \$200 dollars as of November 23, 2016.

This Detective is not aware of any liquor license violations or of any complaints about Gonzo's Bigg Dogg Brewing Co.

If approval is given for the Small Wine Making license, Gonzo's Bigg Dogg Brewing will be allowed by the State of Michigan to do the following.

A Small Wine Maker is authorized to sell wine manufactured by the Small Wine Maker from the winery premises to consumers for off-premises consumption (take-out sales) with no additional license. A Small Wine Maker may also sell wine they manufacture by the glass for consumption on the premises in a restaurant at their winery premises that is owned by the Wine Maker or Small Wine Maker or is leased to another person. Only wine manufactured by the Wine Maker or Small Wine Maker may be sold by the glass in a winery restaurant.

A Wine Maker or Small Wine Maker may offer free or may include a charge for samples to consumers for on premise tastings at the winery premises. The samples must be of products manufactured and sold under the Wine Maker or Small Wine Maker license.

Compliance with Laws, Zoning, and Ordinances

A Small Wine Maker must comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules and ordinances.

COMMUNITY RESOURCES CONSULTED

No community resources were consulted.

ATTACHMENTS:

Type	Description
▣	Resolution Local Approval Resolution for Gonzo's Bigg Dogg Brewing



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 _____ meeting of the _____ Kalamazoo City Commission _____ council/board
(regular or special) (township, city, village)
called to order by _____ on Dec 5, 2016 at 7:00 p.m.
(date) (time)
the following resolution was offered:

Moved by _____ and supported by _____

that the application from _____ Gonzo's Bigg Dogg Brewing, LLC
(name of applicant)

for the following license(s): _____ Small Wine Maker
(list specific licenses requested)

to be located at: _____ 140 S. Westnedge 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 _____ this application be considered for
(recommends/does not recommend)

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
council/board at a _____ regular _____ meeting held on Dec 5, 2016 (township, city, village)
(regular or special) (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



Commission Agenda Report

City of Kalamazoo

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

FROM: Scott A. Borling, City Clerk

DATE: 11/23/2016

SUBJECT: Adoption of the 2017 City Commission Regular Meeting Schedule

RECOMMENDATION

It is recommended that the City Commission adopt a resolution setting the schedule of regular City Commission meetings for the 2017 calendar year.

BACKGROUND

The proposed 2017 schedule of regular City Commission meetings was designed with following parameters in mind:

- both the Open Meetings Act (OMA) and City Commission Rule #1 require the Commission to establish a schedule of its regular meetings for the calendar year.
- City Commission Rule #1 specifies the Commission will hold its Regular Business Meetings on the first and third Mondays of the month, except as specified in the annual schedule of meetings.
- Section 8(a) of the City Charter requires that the City Commission meet "not less than twice each month."
- if a City-observed holiday falls on the first or third Monday of the month, the Commission meeting has been moved to the next business day.
- on September 24, 2016 the City Commission took action to schedule Work Sessions at 6:00 p.m. on the fourth Mondays of each month through March of 2017.

In addition to Business Meetings and Work Sessions, the proposed 2017 schedule also includes Neighborhood Meetings on the third Monday of every month except January and December. Also, the newly elected Mayor and City Commissioners will take office on Monday, November 13th. Because the City Commission must meet on this date, a meeting is not being scheduled for the first Monday in November.

The recommendation to adopt a regular meeting schedule does not interfere with the ability of the City Commission to hold special Business Meetings, Committee of the Whole Meetings, or Work Sessions when necessary.

COMMUNITY RESOURCES CONSULTED

No community resources were consulted.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation.

ALTERNATIVES

City Commission Rule #1 requires the City Commission to "establish and publish" its schedule of regular meetings for the calendar year prior to January 1st.

The City Commission may choose to schedule additional meetings or amend the attached schedule. However, the City Administration is confident all matters which require City Commission action can be conducted in an efficient manner using the proposed schedule of regular meetings. In addition, the City Commission may amend its meeting schedule at any time during the year if it determines that the number of meetings should be reduced or increased.

ATTACHMENTS:

Type	Description
▣ Resolution	Annual Meeting Schedule Adopting Resolution
▣ Meeting Schedule	2017 City Commission Schedule of Regular Meetings

CITY OF KALAMAZOO, MICHIGAN

RESOLUTION NO. 16-

A RESOLUTION APPROVING AND ESTABLISHING THE SCHEDULE OF REGULAR CITY COMMISSION MEETINGS FOR THE 2017 CALENDAR YEAR

Minutes of a regular meeting of the City Commission of the City held on December 5, 2016, at or after 7:00 p.m., local time, at City Hall.

PRESENT: Commissioners:

ABSENT: Commissioners:

WHEREAS, MCL 15.265(2) requires that a public body post notice of the dates, times and places of its regular meetings within 10 days of its first meeting in a calendar year; and

WHEREAS, City Commission Rule #1 states the City Commission shall establish and publish a schedule of regular meetings that are to be held throughout the calendar year prior to January 1st of each year.

NOW, THEREFORE, BE IT RESOLVED, that the Kalamazoo City Commission hereby approves and establishes the attached schedule of meetings as its Regular Meeting Schedule for the 2017 calendar year; and

BE IT FURTHER RESOLVED, that the City Clerk is directed to post the Regular Meeting Schedule in compliance with the provisions of MCL 15.264-265; and

BE IT FURTHER RESOLVED, that the City Commission reserves the right to modify its Regular Meeting Schedule at any time, subject to the noticing requirements specified in MCL 15.265(3).

The above resolution was offered by _____ and supported by _____.

AYES: Commissioners:

NAYS: Commissioners:

ABSTAIN: Commissioners:

RESOLUTION DECLARED ADOPTED.

CERTIFICATE

The forgoing is a true and complete copy of a resolution adopted by the City Commission of the City of Kalamazoo at a regular meeting held on December 5, 2016. Public notice was given and the meeting was conducted in full compliant with the Michigan Open Meetings Act (PA 267,1976). Minutes of the meeting will be available as required by the Act.

Scott A. Borling, City Clerk

Kalamazoo City Commission

DRAFT 2017 Meeting Schedule

January

3 Business Meeting*
17 Business Meeting*
23 Work Session

February

6 Business Meeting
20 Neighborhood Meeting
20 Business Meeting
27 Work Session

March

6 Business Meeting
20 Neighborhood Meeting
20 Business Meeting
27 Work Session

April

3 Business Meeting
17 Neighborhood Meeting
17 Business Meeting

May

1 Business Meeting
15 Neighborhood Meeting
15 Business Meeting

June

5 Business Meeting
19 Neighborhood Meeting
19 Business Meeting

July

3 Business Meeting
17 Neighborhood Meeting
17 Business Meeting

August

7 Business Meeting
21 Neighborhood Meeting
21 Business Meeting

September

5 Business Meeting*
18 Neighborhood Meeting
18 Business Meeting

October

2 Business Meeting
16 Neighborhood Meeting
16 Business Meeting

November

13 Business Meeting**
20 Neighborhood Meeting
20 Business Meeting

December

4 Business Meeting
18 Business Meeting

Times and Locations

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

Neighborhood Meetings - 6:00 p.m. in the City Hall Community Room

Work Sessions - 6:00 p.m. Locations To Be Determined

*This meeting will take place on Tuesday rather than Monday due to the observance of a national holiday

**City Commission Oath of Office Ceremony



Commission Agenda Report

City of Kalamazoo

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

FROM: Clyde J. Robinson, Acting City Attorney

PREPARED BY: Laura J. Echtenaw, Legal Secretary

DATE: 11/28/2016

SUBJECT: Extension of Bronson Park Lease with County

RECOMMENDATION

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

BACKGROUND

The City of Kalamazoo has leased the Bronson Park from the County since 1855. Although the City maintains and administers the Park, it does not own it. The City has proposed acquiring the Park from the County in an effort to establish title over the property as part of seeking grants and soliciting donations to help pay for improvements as part of the Master Plan for the Park, including much needed repairs to the Ianelli Fountain.

The proposed one-year lease would run from January 5, 2017, extending the terms and conditions which have been in place since a 50 year lease expired in 2014. It is anticipated that the City and County may be able to finalize the conditions so as to permit the City to acquire title to Bronson Park within the next year.

COMMUNITY RESOURCES CONSULTED

The Kalamazoo County Board of Commissioners will consider the lease extension at its December 6, 2016 meeting.

FISCAL IMPACT

None. The continued maintenance of the Park by the City is part of the 2017 proposed budget.

ALTERNATIVES

If the City does not extend the Lease, it would become a holdover tenant, with the benefit of a formal lease agreement. This situation would create uncertainty in applying for grants and for prospective donors. It would also create uncertainty for those organizations which have requested and received permission from the City to use the Park for special events in 2017.

ATTACHMENTS:

Type Description

▣ Lease Proposed Bronson Park Lease

LEASE OF BRONSON PARK

This Lease is made this _____th day of December, 2016, 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 let and lease to City for a period of one (1) year from January 5, 2017, to January 4, 2018, 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 executing 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 public, civic, social or other events excepted); and agrees that it will maintain and administer said park in substantially the same 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 County, by proper proceedings conducted under law, may recover possession thereof and terminate this Lease.

4. The park maintenance and administration undertakings of the City as herein provided are declared to be full and adequate consideration for this Lease.

COUNTY OF KALAMAZOO

WITNESSES

John P. Taylor, Chairperson
Kalamazoo County Board of
Commissioners

Timothy A. Snow
County Clerk/Register

CITY OF KALAMAZOO

WITNESSES

Bobby J. Hopewell, Mayor

James K. Ritsema, City Manager



Commission Agenda Report

City of Kalamazoo

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

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

REVIEWED BY: Jeffrey Hadley, Public Safety Chief

PREPARED BY: Ryan Tibbets, Assistant Chief – Fire Administration/Finance

DATE: 11/17/2016

SUBJECT: Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement

RECOMMENDATION

It is recommended that the City Commission approve and adopt the Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement and authorize the City Manager to sign the agreement.

BACKGROUND

The specialized services of a hazardous materials response team are above and beyond the normal response services provided by local fire departments. Specialized training and equipment are needed (and required) to mitigate hazardous materials spills and leaks. The Kalamazoo County Hazardous Materials Response Team (KCHMT) has proven to be a cost-effective and efficient means to protect the residents and visitors of Kalamazoo County.

The proposed agreement, (January 1, 2017-January 1, 2019) allows the partner agencies to ensure trained responders are available and equipped to respond to hazardous materials incidents. In addition, the agreement facilitates and coordinates the recovery of the cost of response activity to hazardous materials incidents as permitted by Section 20126a (M.C.L. 324.20126a) of the Michigan Natural Resources and Environmental Protection Act, (NREPA) Public Act 451 of 1994.

COMMUNITY RESOURCES CONSULTED

The partner agencies include:

City of Kalamazoo
City of Portage
County of Kalamazoo
Charter Township of Kalamazoo
Charter Township of Oshtemo
Charter Township of Comstock
Charter Township of Texas
South Kalamazoo County Fire Authority
Charter Township of Cooper
Charleston Township

City of Galesburg
Pavilion Township
Ross/Augusta Fire Department
City of Parchment
Richland Township
Alamo Township
Village of Richland

Each agency will be going to their governing bodies for approval of the agreement.

FISCAL IMPACT

Each participating agency will have to pay a membership fee of \$1,400 annually which provides for the maintenance of hazardous materials response equipment and supplies. This amount has been set aside in the 2017 Public Safety budget and will be provided in subsequent budgets as approved by the City Commission.

ALTERNATIVES

The alternative to approving this agreement would be to establish an independent Kalamazoo Public Safety Hazardous Materials Response Team. This alternative is not recommended as it would be more costly and less efficient to have an independent response team.

ATTACHMENTS:

Type	Description
□	Agreement Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement

INTERGOVERNMENTAL FIRE PROTECTION HAZARDOUS MATERIALS INCIDENT RESPONSE AGREEMENT

This Intergovernmental Fire Protection Hazardous Materials Incident Response Agreement, dated the ____ day of _____, 2016, between the undersigned municipalities, is as follows:

WHEREAS, the specialized services of a hazardous materials response team are above and beyond the normal response services provided on a reciprocal basis under the provisions of the Mutual Aid Fire Agreement entered into by the parties; and

WHEREAS, there is a need to facilitate and coordinate the recovery of the cost of response activity to hazardous materials incidents as permitted by Section 20126a (M.C.L. 324.20126a) of the Michigan Natural Resources and Environmental Protection Act, (NREPA) Public Act 451 of 1994; and,

WHEREAS, each party desires to enhance and improve responses to hazardous materials incidents occurring within Kalamazoo County, and,

WHEREAS, 1951 P.A. 35, as amended, being MCL 124.1 *et seq.*, provides that municipalities may enter into cooperative agreements to provide services to and for each other; and,

WHEREAS, this Hazardous Materials Incident Response Agreement is intended to assist the undersigned municipalities in providing timely and efficient responses to hazardous materials incidents within Kalamazoo County.

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, IT IS AGREED:

1. Definitions

- A. **Financial Custodian** means the custodian of response activity costs and annual dues as provided in paragraph 4 of this agreement.
- B. **Fire Chief** includes the fire chief, the fire chief's designated representative or such member of the fire department as is in charge of the fire department emergency and technical response personnel, or the chief of a public safety department or that official's designated representative.
- C. **Incident Management System:** The National Incident Management System (NIMS) required for managing a hazardous materials incident by state and federal regulation.
- D. **Member in Good Standing** means a municipality that has entered into this agreement and is current in the payment of dues and compliant with the obligations specified in this agreement.

- E. **KCHMT member** means an employee of a participating municipality who becomes a member of the Kalamazoo County Hazardous Materials Response Team, (KCHMT) as established pursuant to this agreement.
- F. **Participating Municipality** means a municipality that has entered into this agreement and is a member in good standing.
- G. **Recovery Costs** mean the costs associated with recovery of response activity costs as defined by this Agreement, including, but not limited to attorney fees, court filing fees, witness fees and other costs of litigation and collection.
- H. **Requesting Department:** The fire department serving a participating municipality in which the hazardous materials incident exists and that requests aid under this Agreement.
- I. **Responding Department:** Any and all fire departments serving a participating municipality that provide personnel (including personnel who respond as a member of the Kalamazoo County Hazardous Materials Response Team) or equipment under this Agreement. The Kalamazoo County Office of Emergency Management and responding EMS providers are included in this definition.
- J. **Response Activity** means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources consistent with the rules relating to the selection and implementation of response activity promulgated under the Michigan Natural Resources and Environmental Protection Act.
- K. **Response Activity Costs or Costs of Response Activity** means all costs incurred by the requesting department and all responding departments, including the KCHMT, in taking or conducting a response activity, including all costs, that a municipality may recover pursuant to Section 20126a of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20126a. These costs may include, but not be limited to, administrative fees assessed by the financial custodian to services provided relative to the collection of response activity costs, wages and/or salaries except for those employees who are already on duty and being paid; costs of vehicles responding at either the MEMAC reimbursement rate or another verified manner of calculating operating costs; costs of replacing equipment and supplies that are expended and not reusable; costs of decontaminating or cleaning equipment or other costs necessary to put that equipment back in service; costs of personnel support including, but not necessarily limited to, food, lodging, portable rest room facilities, or transportation; costs to rent, purchase or otherwise obtain equipment, supplies, or other material

necessary to mitigate the incident; costs to contract with specialized response personnel or organizations.

- L. **MEMAC Reimbursement Rate** means the reimbursement rates for apparatus and other equipment used to mitigate incidents contained in the Michigan Emergency Management Assistance Compact.

2. Kalamazoo County Hazardous Materials Response Team

- A. Participating municipalities agree to form and jointly operate the Kalamazoo County Hazardous Materials Response Team, (KCHMT) the purpose of which is to assist local fire departments by providing a trained, equipped team of on-scene support to the incident commander of the requesting department for the provision of response activity to a hazardous materials incident.
- B. The KCHMT shall be managed by an executive board as provided for in the by-laws.
- C. The executive board shall set all operating standards, policies and procedures and shall establish criteria for individual membership on the team.
- D. The executive board shall elect one member to serve as chair of the board and other such officers as may be required. Elected officers will serve a one-year term of office, corresponding to the fiscal year, and may serve consecutive terms.
- E. The KCHMT shall maintain By-laws, an Operations Manual and a listing of equipment owned by the team. An updated copy of each, along with a report of annual KCHMT activity shall be provided to any requesting municipality annually, by March 1.
- F. Response Procedures
 - 1. A Requesting Department may request the services of the KCHMT following dispatch and response procedures as outlined in the KCHMT Operations Manual.
 - 2. The KCHMT, when responding to an incident, shall operate within the Incident Management System put in place by the Requesting Department. Command of the incident shall remain with the Requesting Department.
 - 3. If a Responding Department's personnel arrive prior to the Requesting Department's units or personnel, the assisting personnel will establish "Incident Command" as prescribed in NIMS and proceed with emergency operations. Upon arrival of a command officer from the Requesting Department, "Incident Command" will be passed to the Requesting Department.

4. Assisting personnel and units will be released and returned to their jurisdiction as soon as practical.

3. Membership Dues

Each municipal fire department serving a participating municipality or municipalities will be required to pay annual dues in the amount of \$1,400.00 per fiscal year.

- A. The municipal fire departments will be invoiced not later than October 1 for dues for the next calendar year. The department will be in arrears if the dues are not received by January 1.

4. Custodian of Dues and Recovered Costs

- A. The County of Kalamazoo will be the custodian of all dues and costs recovered pursuant to paragraph 9 of this agreement. The dues and recovered costs shall be placed in separate accounts and maintained in accordance with standard municipal accounting procedures.

5. Geographical Area of Coverage

The KCHMT shall provide assistance to any Requesting Department within Kalamazoo County. The KCHMT may also provide assistance to municipalities adjoining Kalamazoo County in which there is a written mutual aid agreement. All requests for KCHMT assistance outside of Kalamazoo County must be made by a requesting department that is on scene of the incident, or the Battle Creek Hazmat Team.

6. Personnel and Equipment Standards

KCHMT members and equipment shall meet the following minimal levels of training or recognized industry standards:

- A. All KCHMT members shall be certified to the Hazardous Materials Technician level by a representative of the municipality employing the member. However, the executive board of the KCHMT may approve team membership for individuals certified to the Hazardous Materials Operations level if such membership has been determined to provide a benefit to the team.
- B. Equipment used shall comply with all applicable rules and regulations including, but not limited to, CFR 1910.120, MIOSHA Part 432, and standards adopted by the executive board.

7. Training and Medical Examinations

- A. KCHMT members shall meet all statutory and training requirements applicable to the team position being filled.
 - 1. The KCHMT will conduct regular training as approved by the Executive Board to allow KCHMT members to remain competent in necessary skills. KCHMT members are expected to comply with training requirements.
 - 2. KCHMT members who fail to maintain training requirements or required certifications, as established by the executive board of the KCHMT, may be removed from KCHMT membership by action of the executive board. Such action is not subject to appeal by the participating municipalities.
 - 3. Employees of the participating municipalities who are KCHMT members shall attend monthly training sessions of the team as part of their employment by the participating municipality that employs them.
- B. It is the responsibility of the participating member that is an employer of a KCHMT member to provide periodic physical examinations that meet the requirements of 29 CFR 1910.120. The frequency of these examinations may range from twelve to twenty-four months based on the recommendation of the physician. Prior to joining the KCHMT, KCHMT member applicants shall undergo a physical examination to identify any pre-existing medical conditions and to record baseline measurements that may change over time.

8. Liability and Mutual Release

- A. Each participating municipality providing KCHMT members to KCHMT shall be solely responsible for all costs and expenses associated with its employees who are KCHMT members and equipment utilized by its employees who are KCHMT members in responding to emergencies or participating in training under this Agreement, including without limitations, wages and fringe benefits, workers' compensation, disability or pension contributions, and the purchase, repair or maintenance of equipment and fire apparatus.
- B. Each participating municipality shall only be responsible for claims, demands, costs (including attorney fees) and damages, for death, bodily injury, or property damage arising directly from the acts or omissions of its individual personnel.
- C. Each participating municipality shall defend, indemnify and hold all other participating municipalities including the elected officials, agents and employees (hereinafter collectively as "Indemnitee") of the other participating municipalities harmless from all claims, demands, costs (including attorney's fees) and damages for death, bodily injury, or property damage arising directly from the acts or omissions of its individual personnel, employees or agents. Provided, however, that if such death, injury or damage is caused by personnel, employees or agents of multiple units participating municipalities, each participating municipality shall then be responsible ~~to~~ for its percentage of responsibility. and shall indemnify the other participating municipalities so that each pays in proportion to its responsibility.

- D. In providing the indemnification set forth above, the Indemnitor is not waiving any defense as is otherwise available to it by law, provided such defenses are also available and asserted by the Indemnitor for the benefit of the Indemnitee. The Indemnitor shall not be responsible for the indemnification obligation set forth above with respect to the Indemnitee to the extent that the Indemnitee has waived a defense that was otherwise available to it by law. The Indemnitor shall have the option to settle any claim, demand or liability on such terms as it shall determine.
- E. No fire fighter or emergency medical personnel from any Department shall be considered a drafted person of another Department when performing services in furtherance of this Agreement under MCL 123.401 through MCL 123.403.

9. Recovery or Reimbursement of Response Activity Costs

- A. As soon as practicable after providing response activity to a particular hazardous materials incident:
 - 1. The KCHMT executive board will submit an itemized statement of all response activity costs (excluding labor costs) incurred by the KCHMT in response to the particular incident to the Requesting Department, and provide a copy of such statement to each Responding Department and the County of Kalamazoo.
 - 2. Each Responding Department will submit an itemized statement of all response activity costs (including labor costs) incurred by the Responding Department in response to the particular incident to the Requesting Department, and provide a copy to all other Responding Departments, and the KCHMT, and the County of Kalamazoo.
 - 3. The Requesting Department will submit an itemized statement of all recovery costs incurred by the Requesting Department pursuant to paragraph 9(C) below to all Responding Departments and the KCHMT prior to distribution of recovered costs pursuant to paragraph 9 (D) below.
- B. The Requesting Department will pay the response activity costs of the KCHMT with respect to materials owned and used by the KCHMT in connection with providing response activity to a particular hazardous materials incident within 30 days of receipt of the itemized statement from KCHMT or on a payment schedule agreed to by the Executive Board. The Requesting Department will be responsible for the payment of these costs irrespective of any recovery of response activity costs as provided in paragraph 9(C) below. The KCHMT will provide an accounting of all response activity costs paid to it by the Requesting Department pursuant to this paragraph to all Responding Departments and the County of Kalamazoo prior to distribution of recovered costs pursuant to paragraph 9 (D) below.

- C. Recovery of all response activity costs incurred by the Requesting Department, the KCHMT, and any Responding Department as provided by the Michigan Natural Resources and Environmental Protection Act (NREPA) will be the responsibility of the Requesting Department. The Requesting Department will be responsible for all recovery costs associated with recovery of the response activity costs. The obligation of the Requesting Department to recover response activity costs may be waived by a vote of at least two thirds of the executive board of the KCHMT upon a determination that the expense of cost recovery would not be cost effective. In that event, each participating municipality may elect to recover its own costs.
- D. All costs recovered by the Requesting Department as provided in paragraph C, will be deposited with the County of Kalamazoo as the custodian of such funds. Response activity costs will then be paid first to the KCHMT in accordance with its itemized statement, to the extent response activity costs of KCHMT have not been fully reimbursed by the Requesting Department as shown on the accounting for payment of same pursuant to paragraph B, 9 (B), above. The response activity costs of the Requesting Department and the each Responding Departmental will then be paid from the remaining funds recovered. If the remaining funds recovered will not fully reimburse the Requesting Department and each Responding Department, then the remaining funds will be distributed to the Requesting Department and each Responding Department proportionate to the itemized statement prepared by each Department and each Department will be solely responsible for its unreimbursed costs.

10. Multiple Demands For Service

If any participating municipality is confronted with a simultaneous demand to assist a fire department of another governmental unit or respond to a fire/rescue call within that municipality's jurisdictional boundaries, the command officer in charge of that municipality's responding fire/rescue equipment and personnel shall have the discretion to deploy that equipment and personnel for their best utilization in the interest of public health, safety and welfare and with the recognition of that municipality's primary obligation to respond within its own jurisdiction.

11. Effect Upon Other Agreements

The participating municipalities have also entered into a Mutual Fire Protection Contract, dated March 6, 1987. That contract shall remain in effect and shall not be changed by this agreement.

12. Effective Date, Term, Dissolution, and Termination of Membership

This Agreement is effective as of _____ 2016, and shall continue in force until January 1, 2019, or dissolved by a majority vote of the governing bodies of the participating members. A participating member may terminate its membership with or without cause, upon thirty (30) days written notice to the other participating members. Such termination of membership shall not effectuate the dissolution of this agreement or the KCHMT.

IN WITNESS THEREOF, those parties hereto have executed this Agreement on the date indicated above.

CITY OF PORTAGE

By

Its

CITY OF KALAMAZOO

By

Its

CHARTER TOWNSHIP OF KALAMAZOO

By

Its

CHARTER TOWNSHIP OF OSHTOMO

By

Its

CHARTER TOWNSHIP OF COMSTOCK

By

Its

CHARTER TOWNSHIP OF TEXAS

By

Its

SOUTH KALAMAZOO COUNTY FIRE
AUTHORITY

By

Its

CHARTER TOWNSHIP OF COOPER

By

Its

CHARLESTON TOWNSHIP

By

Its

CITY OF GALESBURG

By

Its

PAVILION TOWNSHIP

By

Its

ROSS/AUGUSTA FIRE DEPARTMENT

By

Its

CLIMAX TOWNSHIP

By

Its

CITY OF PARCHMENT

By

Its

RICHLAND TOWNSHIP

By Lupanne Hanna

Its Supervisor

ALAMO TOWNSHIP

By _____

Its _____

COUNTY OF KALAMAZOO

By _____

Its _____

VILLAGE OF CLIMAX

By _____

Its _____

VILLAGE OF RICHLAND

By _____

Its _____



Commission Agenda Report

City of Kalamazoo

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

FROM: Scott A. Borling, City Clerk

DATE: 11/21/2016

SUBJECT: Appointments to Boards and Commissions

RECOMMENDATION

It is recommended that the City Commission approve the appointment of **Christopher Flach** to the Zoning Board of Appeals as Alternate Member #2 for a term expiring on March 31, 2017.

BACKGROUND

The City Commission must approve appointments and reappointments to the Zoning Board of Appeals (ZBA). The City Clerk's Office receives applications for the ZBA and forwards them to the staff liaison. It is then the responsibility of the ZBA to recommend appointments and reappointments to the City Commission. The attached *Appointee Nomination Report* details Mr. Flach's qualifications.

COMMUNITY RESOURCES CONSULTED

None

FISCAL IMPACT

There is no fiscal impact associated with this appointment.

ALTERNATIVES

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

ATTACHMENTS:

Type	Description
☐	Resolution ZBA Nomination Report



Advisory Boards and Commissions Appointee Nomination Report

City of Kalamazoo

RECOMMENDATION

The Zoning Board of Appeals (ZBA) recommends the City Commission approve the following appointment:

- The appointment of **Chris Flach** as Alternate #2 for a partial term expiring on March 31, 2017.

SPECIAL REQUIREMENTS FOR THIS POSITION

Zoning Board of Appeals members must be residents of the City of Kalamazoo and should have knowledge of the City including some familiarity with the Zoning Ordinance and knowledge of the current issues in the community.

SELECTION PROCESS

Applicants Considered

There were two applicants considered for this vacancy.

Interview Process and Final Recommendation

Interviews were held on August 25, 2016.

NOMINEE QUALIFICATIONS

Dual Board Memberships

Mr. Flach is not presently any other City board.

Residency

Mr. Flach currently resides in the South Westnedge Neighborhood

Term Limits

This would be Mr. Flach's first partial term. Mr. Flach will be eligible to serve two full terms after this term.

Training, Experience, Education and Skills

Chris Flach is a realtor with a local real estate company. Mr. Flach has background in residential and commercial property sales. Mr. Flach also served in the United States Army prior to beginning his real estate carrier.

Contribution to Diversity

Mr. Flach is from the South Westnedge Neighborhood and will further diversify the number of neighborhoods represented by the ZBA membership.

NOMINATION RATIONALE

Mr. Flach possesses significant real estate experience which will benefit the Zoning Board of Appeals in reviewing monthly applications dealing with land use issues.

CITY CLERK'S CERTIFICATION

The nominee's qualifications regarding dual board memberships, residency, and term limits have been reviewed and verified by the City Clerk's Office.

Scott A. Borling, City Clerk