



City of East Grand Rapids
Regular City Commission Meeting
Agenda

August 15, 2016 – 6:00 p.m.
(EGR Community Center – 750 Lakeside Drive)

1. Call to Order and Pledge of Allegiance.
2. Public Comment by persons in attendance.
3. Report of Mayor and City Commissioners.

Regular Agenda Items

4. Oath of Office for new Public Safety Officer (no action requested).
5. Kent County Recycling Program Update (no action requested).

Consent Agenda – Approval Requested

6. Receipt of communications.
7. Minutes of the regular meeting held August 1, 2016 (approval requested).
8. Report of Finance Committee on disbursement of funds: payroll disbursements of \$233,354.78; county and school disbursements of \$5,854,010.88, and total remaining disbursements of \$717,237.71 (approval requested).
9. Appointment to the Board of Review (approval requested).
10. Resolution approving a participation agreement with the International City/County Management Association Retirement Corporation (approval requested).
11. Temporary easement for Consumers Power for Remington work (approval requested).
12. Purchase of firefighting gear for the Public Safety Department (approval requested).
13. Purchase of bypass pump for Public Works operations (approval requested).
14. Preliminary minutes of the Parks & Recreation meeting held June 13, 2016 (no action requested).

* * *



Memorandum

Date: August 15, 2016

To: Honorable Mayor and City Commissioners, City of East Grand Rapids

From: Mark A. Herald, Director of Public Safety

Subject: **New Public Safety Officer – Andrew Keane Good**

ANDREW GOOD started his duties as a Public Safety Officer for the City of East Grand Rapids on August 1, 2016. He is the first ever East Grand Rapids Bike Patrol Cadet to be hired as an East Grand Rapids Public Safety Officer. Andrew graduated from Grand Rapids Montessori High School. He received his Associates Degree in Arts (2013) and his law enforcement certification (2015) from Grand Rapids Community College. Andrew obtained his paramedics license from Great Lakes EMS Academy (2010) and his Firefighter I & II certification from the Walker/Wyoming Fire Academy.

Andrew has worked for Rockford Ambulance, AMR, Cutlerville Fire Department, Sparta Fire Department, and the Ottawa County Sheriff's Department. In 2015, he was selected "Firefighter of the Year" for the Sparta Fire Department. Andrew was the MCOLES "Outstanding Award" winner while at the police academy and also received a lifesaving award while working for Rockford Ambulance.

Andrew comes to us as a fully cross-trained public safety officer. He and his wife Stacey are welcome additions to the City and our Public Safety family.



CITY OF EAST GRAND RAPIDS

750 LAKESIDE DRIVE SE-EAST GRAND RAPIDS, MICHIGAN 49506

DOUG LA FAVE
ASSISTANT CITY MANAGER

MEMORANDUM

TO: Honorable Mayor and City Commissioners
FROM: Doug La Fave, Assistant City Manager
DATE: 8/5/2016

RE: Kent County Recycling Fees for 2017

Action Requested: N/A-Informational.

Background: Kent County has operated a recycling facility for residential recycling for 25 years. Up until 2010 residential recycling required that recyclables be presorted in advance of being delivered to the recycling facility. In 2010 Kent County opened the Recycling and Education Center which processes recyclables as a single-stream facility, so recyclables are not required to be presorted. Kent County has recycled over 300,000 tons of recycled materials that have gone back onto the market since the recycling program started.

This past year, the Kent County Department of Public Works has held several meetings with public and private waste/recycling haulers to discuss an increase in fees for recycling as lower commodity markets have had an impact on the budget for the facility with respect to operations, debt service and equipment replacement. The Kent County Board of Public Works approved a fee for public/private haulers in Kent County at \$35 per ton. It is possible that the licensed private haulers that service East Grand Rapids may pass long the increase in cost to residents.

Darwin Baas, the Director of Kent County Public Works, will be at the August 15, 2016 City Commission meeting to give an update on recycling in Kent County including the fee increase.

Brian Donovan, City Manager



KENT COUNTY DEPARTMENT OF PUBLIC WORKS

June 21, 2016

2016 BOARD

Theodore J. Vonk
Chair

Shana Shroll
Vice Chair

William Byl
Secretary

Dave Bulkowski

David Groenleer

Dan Koorndyk

Richard Vander Molen

Darwin J. Baas
Director

RE: Kent County Recycling & Education Center Service Fees for 2017

Dear Waste Hauler,

This letter serves as the 180-day notice, as required by the Recyclable Materials Hauler Agreement, for service fee rate changes that will be implemented January 2, 2017 for materials delivered to the Kent County Recycling & Education Center (REC). This rate change was approved by the Kent County Board of Public Works on June 16.

The goal of our transparent budget planning process is to provide West Michigan with sufficient single stream processing capacity, continue to drive operational efficiencies, cover our expenses and provide price stability. We continue to work with partners to increase participation, reduce contamination and provide education about the true cost for recycling.

You may recall the February informational meetings where higher service fees were discussed due to lower commodity markets and we understand processing expenses impact your cost of operations and recycling subscription fees to your customers.

The Board of Public Works approved service fees that achieves three objectives: cover the cost of operations, meet debt service obligations, and provide for necessary equipment refurbishment. Essentially, it is a break even budget that supports 45,000 tons of process capacity for 2017.

Earl G. Woodworth Building
1500 Scribner Avenue NW
Grand Rapids, MI 49504-3233

Telephone: 616.632.7920
Facsimile: 616.632.7925
kcdpw@kentcountymi.gov

2017 Fee Structure

- **Waste haulers delivering from within Kent County only:** \$35 per ton
- **Waste haulers delivering from Kent & neighboring counties:** \$40 per ton
- **Waste haulers delivering transfer trailer loads:** \$45 per ton

Please be assured the service fees are only used for expenses related to facility operations and do not supplement recycling drop off sites, recycling education, or other resource recovery efforts funded by other DPW enterprise activities.

The DPW continues to explore rebate and rate stabilization fee structures that could be used in future years where customers could have opportunity to participate in revenue sharing. We're open to hearing your ideas to make this possible.

As always, please feel free to contact me directly at 616.632.7919 if you have questions or would like to understand better our budget and cost of operations at the Recycling and Education Center.

Sincerely,



Darwin J. Baas
Director



PROCEEDINGS OF THE CITY COMMISSION
CITY OF EAST GRAND RAPIDS

Regular Meeting Held August 1, 2016

Mayor Seibold called the meeting to order at 6:01 p.m. in the City Commission Chambers at the East Grand Rapids Community Center and led the audience in the Pledge of Allegiance.

Present: Commissioners Hamrick, Miller, Skaggs, Zagel, and Mayor Seibold

Absent: Commissioners Dills and Duncan

Also Present: City Attorney Huff; City Manager Donovan; Assistant City Manager LaFave; Public Safety Director Herald; Zoning Administrator Faasse; City Clerk Brower; Communications Specialist Greenleaf

2016-74. Peter Dimitriou, 2621 Inverness, spoke about drought and efforts to develop new crops and plants that will grow in warmer climates.

Lance Werner spoke on behalf of the Zoo & Museum millage that will be on the ballot in November asking for a millage of .44 mils for the next 10 years.

2016-75. Commissioner Miller thanked the Kent County Chiefs of Police for the joint letter put out recently about events across the country.

Commissioner Hamrick reminded everyone to vote tomorrow.

Commissioner Zagel announced the annual Taste of East event was scheduled for Thursday, August 18 from 5:30 to 8:30 pm in Gaslight Village. He noted the EGR Public Safety officers would be present to meet members of the public and show the fire truck.

2016-76. Kent District Library Director Lance Werner, KDL Board Member Craig Wilson and EGR Branch Manager Dawn Lewis were present to give an update on KDL operations and statistics for 2015. Mr. Wilson reported on improvements to the materials available to the blind and handicapped. Ms. Lewis thanked the city for keeping the building in such great shape and thanked the Parks & Recreation Department for all their assistance with room reservations, setup and equipment storage.

2016-77. Lee Mueller, arborist with Davey Resource Group, was present to review the results of the tree inventory project completed in May. The project cataloged 7,082 trees in city parks and right-of-ways. The most common species are Norway maples, sugar maples, red maples and thornless honeylocust. A plurality (44%) of the urban forest is in the established 9-17" diameter class, and the majority of the tree population classified in good condition. Mr. Mueller highlighted several areas of the report, including recommendations for varying the types of tree offered during the yearly tree planting cycle to reduce the overall percentage of maple trees in the city.

Assistant City Manager LaFave reported the tree inventory data had been entered into the geographical information system and will be used by city staff when planning for future planting programs, annual tree trimming, construction projects, etc. City Manager Donovan suggested the inventory be done again in 5-10 years to keep the information as updated.

2016-78. A zoning variance hearing was held regarding the request of Bryan & Heidi Krannitz of 2360 Lake Drive to allow the construction of a roof over the existing front porch with a front yard setback of 38.5,' instead of the 58.4' allowed.

Zoning Administrator Faasse noted the request to construct a roof over the existing porch was the only part of a larger remodeling project that required a variance due to a portion of the roof line being within the front yard setback. He stated the roof would overhang the concrete by 1'2" to allow for the columns to support the roof.

Bryan Krannitz, 2360 Lake Drive, explained the intent to add a covered wrap-around porch and an addition over the garage to improve the aesthetics of the home and provide an outdoor seating area in the absence of a back yard.

Mayor Seibold opened a public hearing. No other public comment was received. Mayor Seibold closed the public hearing. The following communications were received at City Hall concerning this variance request:

- Mona Erickson, 931 Breton In Favor.

2016-78-A. Miller-Hamrick. That the request of Bryan & Heidi Krannitz of 2360 Lake Drive to allow the construction of a roof over the existing front porch with a front yard setback of 38.5,' instead of the 58.4' allowed be approved with the condition that the porch remain unenclosed with open sides.

Commissioner Skaggs stated he would support the variance if the space remains open on the sides. He noted it was good to see the improvements at this very visible intersection.

Commissioner Miller thanked the applicants for planning improvements that would fit into the surrounding area so well.

Commissioner Hamrick agreed this would be a welcome addition to this intersection.

Mayor Seibold also supported the renovation plans and the upgrade to a home in such close proximity to Gaslight Village and the community center.

Yeas: Hamrick, Miller, Skaggs, Zigel and Seibold – 5
Nays: -0-

2016-79. Adoption of modified METRO Act right-of-way telecommunications permit and cell license agreement for Distributed Antenna Systems (DAS).

City Attorney Huff explained the new technology trend of locating smaller antennas on existing or new utility poles in urban areas to increase data coverage. This new technology necessitates a special METRO Act permit and a licensing agreement for the issues that fall outside the METRO Act permit. No ordinance change is required at this time. Mr. Huff noted there would likely be updates to these documents over time as additional issues arise.

2016-79-A. Skaggs-Miller. That a special METRO Act right-of-way telecommunications permit and cell license agreement for Distributed Antenna Systems (DAS) be approved as set forth in Exhibits "A" and "B" attached hereto.

City Manager Donovan stated the permits and agreements were a good way to balance the aesthetics of having more antennas in the area with consumer need for more coverage.

Commissioner Hamrick stated she would prefer the telecommunications company use utility poles that run in the rear of properties. City Attorney Huff stated that while that would be preferable, it cannot be required. He also noted that the state may take control of this issue at some point.

Assistant City Manager LaFave stated the new permit and license documents will allow city staff to work with telecommunications companies. He also noted that many area municipalities were working together to provide uniform guidelines to make things easier for the telecommunications companies.

Yeas: Hamrick, Miller, Skaggs, Zigel and Seibold – 5
Nays: -0-

2016-80. Zigel-Hamrick. To approve the consent agenda as follows:

- 2016-80-A. To approve the minutes of the regular meeting held July 18, 2016.
- 2016-80-B. Report of Finance Committee on disbursement of funds: payroll disbursements of \$226,018.53; county and school disbursements of \$-0-, and total remaining disbursements of \$ \$400,181.17.
- 2016-80-C. The purchase of two Freightliner dump/plow trucks through Tri-County International Trucks of Dearborn and dump boxes, spreaders plows controllers, hydraulics systems and lighting from Truck & Trailer Specialties of Dutton for a total of \$158,000 per vehicle through the MIDeal purchasing program.
- 2016-80-D. The purchase of two 2017 Ford Interceptors with related equipment and outfitting as requested in the Assistant City Manager memo dated July 15, 2016 in the amount of \$51,600 for each vehicle.

Yeas: Hamrick, Miller, Skaggs, Zagel and Seibold – 5

Nays: -0-

The meeting adjourned at 7:30 p.m., subject to the call of the Mayor until August 1, 2016.

Karen K. Brower, City Clerk

Attachments: A – METRO Act right-of-way telecommunications permit
B – METRO Act cell license agreement

Attachments listed above are available for inspection at the office of the City Clerk.

DAS/SMALL CELL LICENSE AGREEMENT

BETWEEN

THE CITY OF EAST GRAND RAPIDS

and

THIS LICENSE AGREEMENT DATED AS OF THIS ___ DAY OF _____, 201___, IS ENTERED INTO BY AND BETWEEN THE CITY OF EAST GRAND RAPIDS, A MUNICIPAL CORPORATION (“CITY”), AND _____, A _____ (“LICENSEE”).

WHEREAS, the City has made significant investments of time and resources in the acquisition and maintenance of the Public Ways and such investment has enhanced the utility and value of the Public Ways; and

WHEREAS, the Public Ways within the City are used by and useful to private enterprises including Licensee and others engaged in providing telecommunications services to citizens, institutions, and businesses located in the City; and

WHEREAS, the right to access and/or occupy portions of such Public Ways for limited times, for the business of providing communications services, is a valuable economic privilege, the economic benefit of which should be shared with all taxpayers; and

WHEREAS, beneficial competition between providers of communications services can be furthered by the City’s provision of grants of location and rights to use the Public Ways on non-discriminatory and competitively neutral terms and conditions; and

WHEREAS, LICENSEE is a private enterprise engaged in installing facilities related to and/or providing various communications services within the City by means of fiber connected Distributed Antenna Systems or other Small Cell facilities (DAS/Small Cells or DAS Small Cell Networks); and

WHEREAS, LICENSEE desires to physically install and occupy portions of the Public Way to install additional poles, or to utilize City owned light, traffic signal or other City owned poles for use of its DAS/Small Cells; and

WHEREAS, LICENSEE’s private enterprise will be aided if allowed to exercise a valuable benefit by using the Public Ways in a manner not enjoyed by the general public; and

WHEREAS, LICENSEE is agreeing to compensate the City for installation and/or operation of all antennas, supporting structures for antennas, equipment shelters, poles or houses associated with DAS/Small Cells in exchange for a grant of location and the right to use and

physically occupy portions of the public way for the limited purposes and times set forth below; and

WHEREAS, LICENSEE has or will contemporaneously with this Agreement seek and obtain a METRO Act Permit for the transmission line portion of its DAS/Small Cells pursuant to 2002 PA 48; MCL 484.3101 et seq.; and

WHEREAS, the City grants this license pursuant to its authority to manage its public spaces including, without limitation, authority under the Michigan Constitution of 1963.

NOW THEREFORE BE IT RESOLVED, in consideration of the terms and conditions contained in this Agreement, the City and LICENSEE do hereby agree:

1.0 DEFINITIONS

Except as otherwise defined herein, the following terms shall have the meanings given below:

1.1 “Agency” means any governmental agency or quasi-governmental agency other than City, including, but not limited to, the Federal Communications Commission (FCC) and the Michigan Public Service Commission, METRO Authority or Local Community Stabilization Authority.

1.2 “Business Day” means any Day other than a Saturday, Sunday, or Day observed as an official holiday by the City.

1.3 “DAS/Small Cells” or “DAS/Small Cell Network” means any and all telecommunication facilities or related equipment installed and/or operated by LICENSEE for the provision of telecommunication services including the fiber optic or other cables, antennas, brackets, devices, conduits, poles, shelters, houses, cabinets and all other related equipment to be deployed, installed and/or operated by LICENSEE as described in Exhibit A attached hereto and any facilities that replace the same.

1.4 “Day” means any calendar day, unless a Business Day is specified. For the purposes hereof, if the time in which an act is to be performed falls on a Day other than a Business Day, the time for performance shall be extended to the following Business Day. For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last.

1.5 “FCC” means the Federal Communications Commission.

1.6 “Grant” when used with reference to grant or authorization of the City, means the prior written authorization of the City of East Grand Rapids (and/or its various boards and commissions) unless another person or method for authorization is specified herein or under applicable law. Grant does not mean “Approval” as contemplated in various FCC determinations related to subsequent co-location requests which are expressly not granted by this Agreement.

1.7 “Hazardous Material” means any substance, waste or material which, because of its quantity, concentration or physical or chemical characteristics is in fact or deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

1.8 “Law” or “Laws” means any federal, state or local statute, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other lawful requirement in effect either at the time of execution of this Agreement or at any time during the period the DAS/Small Cells are located in the Public Rights-of-Ways.

1.9 “Person” means an individual, a corporation, a partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association or government agency.

1.10 “Pole” means light poles, wooden power poles, traffic light poles, highway sign poles, utility poles, lighting fixtures or other similar poles located in the Public Way under the jurisdiction of the City or LICENSEE or following transfer from the City or other third parties and may refer to such facilities in the singular or plural, as appropriate to the context in which used. The term poles excludes any historically or architecturally significant poles owned by the City located on Public Ways or, other similar street features.

1.11 “Public Ways” or “Public Rights-of-Way” means the areas in, upon, above, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, boulevards, buildings and any other public places owned by and within the City as the same now or may hereafter exist and which are under the permitting jurisdiction of the City.

1.12 “Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any improvements constructed hereunder by or on behalf of LICENSEE.

1.13 “Services” means those services provided by or through LICENSEE'S DAS/Small Cells as specifically identified in the attached detailed plans and specifications (see Exhibit A). If the City grants the provision of any other services by LICENSEE, upon such grant, the definition of “Services” shall automatically be revised to include any such grant of additional services. Unless specifically expressed in this agreement, Service does not mean video service of any kind.

2.0 TERM OF AGREEMENT

The term of this Agreement shall commence on the date when both of the following occur: 1) this Agreement is executed by the City, and 2) the City issues a METRO Act Permit relative to this same project (“Commencement Date”) and shall end on the earlier of the termination of LICENSEE's METRO Act Permit, or _____.

It is intended that this Agreement be coterminous with the METRO Act Permit issued relative to this same project.

Upon written application to City delivered no later than one year before the end date of the term of this LICENSE, the LICENSEE may request to amend this LICENSE to extend the end date to a proposed new date. Assuming the licensee has met all conditions of the LICENSE and performed to City's satisfaction in providing the Services in the City, and assuming that City believes extension of the term of this license would be in the public interest, the term end date of this Agreement may be extended subject to whatever modifications of other Agreement terms and conditions the City may find are appropriate and in parallel with any termination and/or extension of any related METRO Act Permit(s).

3.0 DESCRIPTION OF WORK

3.1 Installation of DAS/SMALL CELL NETWORKS. During the term of this Agreement, LICENSEE is authorized, on a non-exclusive basis, to locate and install poles, light poles, or to attach to City light pole, traffic signal poles or other City owned poles to house and operate a DAS/Small Cell Network in the utility Public Ways or other City owned or controlled property, as more particularly identified in Exhibit A. This Agreement does not give any rights to use any poles not owned by the City.

3.1.1. Location of DAS/Small Cell Networks. The City may grant or deny the location and installation of any DAS/Small Cell Network on a pole prior to installation, based on reasonable regulatory factors, such as the location of other present or future communications facilities, efficient use of scarce physical space to avoid premature exhaustion, potential interference with other communications facilities and services, the public safety and other critical public services; provided, however, that such grant shall not be unreasonably conditioned, withheld, or delayed.

3.1.2 Map and List of DAS/Small Cell Network. LICENSEE shall maintain in a form acceptable to the City, a current map and list of the location of all facilities used by LICENSEE for its DAS/Small Cell Network pursuant to this Agreement and located in Public Ways. LICENSEE shall provide such list to the City within ten (10) Business Days upon receipt of request for same; and LICENSEE shall, whether or not requested by the City, provide an updated list and map promptly after any change is made in regard to the locations of the specific poles specified by LICENSEE in such lists and maps. LICENSEE shall obtain all required permits and grants of the City and any of its departments or agencies, and any other Agency with jurisdiction over the DAS/Small Cells, services or the property on which the DAS/Small Cells are or will be located, prior to performing any work under this Agreement and shall comply with all of the terms and conditions set forth in these permits. LICENSEE shall not mount, construct, install, maintain, locate, operate, place, protect, reconstruct, reinstall, remove, repair, or replace any DAS/Small Cells on any pole, except as expressly authorized by and in strict compliance with this Agreement, and shall not without

further and separate authorization, otherwise locate more than one antenna or other related structure on any single pole.

3.1.3 Changes to DAS/Small Cell Networks or Their Location on Poles Located on Public Ways. If LICENSEE proposes to install different but comparable equipment, or if the DAS/Small Cell or its location on the poles located on Public Ways deviate in any material way from the specifications attached hereto as Exhibit A, then LICENSEE shall first obtain a grant for the use and installation of the comparable equipment or for any such deviation in the DAS/Small Cells Network from the owners of the poles located on Public Rights-of-Way and shall provide the City with written evidence of such authorization. The City may not unreasonably deny use of the different but comparable equipment, or non-material deviation from the specifications set forth in Exhibit A with regard to the placement of the DAS/Small Cell equipment on the poles located on Public Ways, pursuant to the factors enumerated under Section 3.1.1, and such grant shall not be unreasonably conditioned, withheld, or delayed.

3.2 Provision of Services. The DAS/Small Cell Network installed pursuant to this Agreement may be used solely for the rendering of telecommunication services. If LICENSEE proposes to make a material change to the nature or character of the services not expressly permitted under this Agreement, including, without limitation, video programming services, open video system services, or cable television services, LICENSEE shall notify the City in writing of this intended change not less than one hundred and eighty (180) days prior to the proposed date of change to Service. The City may either (i) accept the proposed change in Service on mutually agreeable terms and conditions or (ii) require that the Services not be changed but rather continue to be provided as contemplated herein.

3.3 Restoration of Work Site Areas. Upon the completion of each task or phase of work to be performed by LICENSEE under this Agreement, LICENSEE shall promptly restore all work site areas to a condition reasonably satisfactory to the City and in accordance with construction standards as specified by the City, ordinary wear and tear not caused by LICENSEE or the DAS/Small Cells Networks excepted. The provisions of this section shall survive the expiration, completion or earlier termination of this Agreement.

3.4 Removal of DAS/Small Cell Network. Upon one hundred and eighty (180) days' written notice by the City pursuant to the expiration or earlier termination of this Agreement for cause, or pursuant to Section 3.6 of this Agreement, LICENSEE shall promptly, safely and carefully remove the DAS/Small Cell Network from and including all poles and other places located in Public Ways, except for facilities subject to LICENSEE'S METRO Act Permit. Facilities located in the Public Ways and subject to LICENSEE'S METRO Act Permit shall be removed as required under that permit. Such obligation of LICENSEE shall survive the expiration or earlier termination of this Agreement. If LICENSEE fails to complete this removal work on or before the one hundred and eighty (180) days subsequent to the issuance of notice pursuant to this

Section 3.4, then the City, upon written notice to LICENSEE, shall have the right at the City's sole election, but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including, without limitation, reasonable administrative costs. LICENSEE shall pay to the City the reasonable costs and expenses incurred by the City in performing any removal work and any storage of LICENSEE's property after removal (including any portion of the DAS/Small Cell Networks) within fifteen (15) Business Days of the date of a written demand for this payment from the City. The City may, in its discretion, obtain reimbursement for the above by making a claim under LICENSEE's performance bond. After the City receives the reimbursement payment from LICENSEE for the removal work performed by the City, the City shall promptly return to LICENSEE the property belonging to LICENSEE and removed by the City pursuant to this Section 3.4 at no liability to the City. If the City does not receive the reimbursement payment from LICENSEE within such fifteen (15) Business Days, or if City does not elect to remove such items at the City's cost after LICENSEE's failure to so remove prior to one hundred and eighty (180) days subsequent to the issuance of notice pursuant to this Section 3.4, any items of LICENSEE's property, including without limitation the DAS/Small Cell Networks, remaining on or about the Public Ways or stored by the City after the City's removal thereof may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner allowed by Law, and in accordance with any legal rights of persons other than the City who own poles located in the Public Way and used by LICENSEE. Alternatively, the City may elect to take title to such abandoned property, whether the City is provided by the LICENSEE, an instrument satisfactory to the City transferring to the City the ownership of such property, or not. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

3.5 Risk of Loss or Damage. LICENSEE acknowledges and agrees that LICENSEE bears all risk of loss or damage of its equipment and materials, including, without limitation, the DAS/Small Cell Networks, installed in the Public Rights-of-Way pursuant to this Agreement from any cause, and the City shall not be liable for any cost of repair to damaged DAS/Small Cell Networks, including, without limitation, damage caused by the City's removal of DAS/Small Cell Networks, except to the extent that such loss or damage was caused by the willful misconduct of the City, including without limitation, each of its commissions, boards, departments, officers, agents, employees or contractors.

3.6 Removal or Relocation of DAS/Small Cell Network at City's Request. LICENSEE understands and acknowledges that the City, at any time and from time to time, may require LICENSEE to remove or relocate upon a written request from the City on ten (10) Business Days' notice at LICENSEE's sole cost and expense, portions of the DAS/Small Cell Network whenever City reasonably determines that the removal or relocation is needed: (1) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a City project, (2) because the DAS/Small Cell Network interferes with or adversely affects proper operation of the light poles, traffic signals, City-owned communications systems or other City facilities, (3) because of a sale or vacation of the Public Ways by the City, (4) because there is a change in use of the Public Ways by the City provided such use similarly affects similarly LICENSED users in the

public right of way, (5) because there is damage to and/or removal of the pole, or (6) to preserve and protect the public health and safety, in a manner not inconsistent with 47 U.S.C. § 332(c)(7). LICENSEE shall at its own cost and expense remove, relocate and/or adjust the DAS/Small Cell Network, or any part thereof, to such other location or locations in the Public Rights-of-Way, or in such manner, as appropriate, as may be designated or granted, in writing and in advance, by the City. Such removal, relocation, adjustment shall be completed within the time prescribed by the City in its written request and in accordance with the terms of this Agreement and the LICENSEE's METRO Act Permit. If LICENSEE fails to remove, relocate, adjust or support any portion of the DAS/Small Cell Network as described by the City within the prescribed time, City may take all reasonable, necessary, and appropriate action, as stated in Section 3.4.

4.0 PERMIT, LIMITATIONS AND RESTRICTIONS

4.1 Limited Authorization. This Agreement does not authorize the placement of DAS/Small Cell Networks or any other equipment on sites, locations, structures or facilities other than those specifically identified herein or in LICENSEE's METRO Act Permit. Placement of the DAS/Small Cell Networks shall comply with the terms of the City's conditions of access in effect as of the date of execution hereof and as are applied equally to all Persons using the Public Rights-of-Way under grant by the City. The Agreement does not relieve LICENSEE of its burden of seeking any necessary permission from other Agencies which may have jurisdiction regarding LICENSEE's proposed use. LICENSEE further acknowledges that it cannot use any historically or architecturally significant poles located on the public rights-of-way or other street furniture, except as may be otherwise expressly authorized in a specific permit issued by the City.

4.2 No Authorization to Provide Other Services. LICENSEE represents, warrants and covenants that its DAS/Small Cell Networks installed pursuant to this Agreement will be utilized solely for the rendering of telecommunication services, and LICENSEE is not authorized to and shall not use the DAS/Small Cell Networks to offer or provide any other services not specified herein. Failure to abide by this may constitute a breach of this Agreement, and the City, after providing LICENSEE with written notice and a meeting concerning the same, may levy fines in an amount not to exceed one thousand dollars (\$1,000.00) per day until the breach is remedied together with all other remedies available at law or equity

4.3 Reservation of Powers. The City reserves any and all powers it may have, now or in the future under applicable local, state, or federal law, to regulate the DAS/Small Cell Networks, their use, or the use of the Public Rights-of-Way or of other City property. LICENSEE shall be subject to all present and future ordinances of the City and its boards and commissions. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require LICENSEE to secure the appropriate permits or authorizations for exercising the rights set forth in this Agreement.

4.4 All Permitted Activities Fees at LICENSEE'S Sole Expense. Notwithstanding any other provision of this Agreement, the construction, operation, maintenance, removal and replacement of DAS/Small Cell Networks, and all other activities permitted hereunder and all fees or obligations of LICENSEE under this Agreement, shall be LICENSEE's sole responsibility at LICENSEE's sole cost and expense.

4.5 Permit. LICENSEE shall obtain, at its sole expense, all applicable permits required by City or any other Agency to perform the work and make ongoing use, as described in this Agreement, of poles, supporting structures, equipment housing, or other facilities located in or on the Public Rights-of-Way, including but not limited to a METRO Act Permit pursuant to 2002 PA 48; MCL 484.3101 et seq.

4.6 No Real Property Interest Created. Neither LICENSEE's use of the Public Rights-of-Way, nor anything contained in this Agreement, shall be deemed to grant, convey, create, or vest in LICENSEE a real property interest in any portion of the Public Rights-of-Way or any other City property, including but not limited to, any fee or leasehold interest in any land or easement. LICENSEE, on behalf of itself and any permitted successor, lessee, or assign, recognizes and understands that this Agreement may create an interest subject to taxation and that LICENSEE, its successor, lessee or assign may be subject to the payment of such taxes.

4.7 All Rights Nonexclusive. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the City to use, and to allow any other Person or Persons to use, any and all parts of the Public Rights-of-Way, exclusively or concurrently with any other Person or Persons and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the Public Rights-of-Way now or at any time during the term of this Agreement, including without limitation any Encumbrances granted, created or allowed by the City at any time.

4.8 Co-Location. This Agreement does not grant or approve any co-location rights to any person or entity, related or unrelated to the LICENSEE. LICENSEE is authorized to install one antenna per site. Additional antennas require new and additional licensure at the City's sole discretion. In the event the City grants a co-location or METRO Act or similar right of way use request to a third party LICENSEE shall make such accommodations necessary to allow such co-location or pole attachment on any pole or other support structure referenced in this Agreement. Co-location requirements may include fees and/or pole attachment agreements that are fair and reasonable as defined by the City and applicable law.

5.0 WAIVERS AND INDEMNIFICATION

5.1 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of the City shall

be personally liable to LICENSEE, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to LICENSEE, its successors and assigns, or for any obligation of City under this Agreement.

5.2 Obligation to Indemnify the City. LICENSEE, its successors and assigns, shall hold harmless, defend, protect and indemnify the City, including, without limitation, each of its commissions, departments, officers, agents, employees and contractors, from and against any and all actions, losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs, judgments or suits including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") of any kind allegedly arising directly or indirectly from: (i) any act by, omission by, or negligence of LICENSEE or its contractors or subcontractors, or the officers, agents, or employees of any of them, while engaged in the performance of the work or conduct of the activities authorized by this Agreement, or while in or about the Public Rights-of-Way or any other City property for any reason connected in any way whatsoever with the performance of the work, conduct of the activities or presence of the DAS/Small Cell Networks authorized by this Agreement, or allegedly resulting directly or indirectly from the presence, construction, installation, maintenance, replacement, removal or repair of the DAS/Small Cell Networks, (ii) any accident, damage, death or injury to any contractor, subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work, conduct of the activities or presence of the DAS/Small Cell Networks authorized by this Agreement, or while in or about the Public Rights-of-Way, for any reason connected with the performance of the work or conduct of the activities authorized by this Agreement, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Agreement, (iii) any accident, damage, death or injury, to real or personal property, good will, and Person(s) in, upon or in any way allegedly connected with the work or activities authorized by this Agreement or the presence of the DAS/Small Cell Networks from any cause or claims arising at any time including, without limitation, injuries or damages allegedly caused, directly or indirectly, in whole or in part, by radio wave transmission or electromagnetic fields emitted by the DAS/Small Cell Networks, (iv) any Release, or threatened Release, of any Hazardous Material caused in whole or in part by LICENSEE in, under, on or about the property subject to this Agreement or into the environment, or resulting directly or indirectly from the DAS/Small Cell Networks or the work or activities authorized by this Agreement, (v) any violation by LICENSEE of the terms and conditions hereof or any permit or grant issued by any Agency in connection with the DAS/Small Cell Networks or Services or pursuant hereto, or any misrepresentation made herein or in any document given by LICENSEE in connection herewith, and (vi) any direct or indirect interference by LICENSEE or the DAS/Small Cell Networks.

5.3 Scope of Indemnity. LICENSEE shall hold harmless, indemnify and defend the City as required herein, including without limitation, each of its commissions, boards, departments, officers, agents, employees and contractors, except only for claims resulting from the sole negligence or willful misconduct of the City, including without limitation, each of its commissions, departments, officers, agents, employees and contractors. LICENSEE specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or

potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered in writing to LICENSEE by the City and continues at all times thereafter. LICENSEE agrees that the indemnification obligations assumed under this Agreement shall survive expiration or other termination of this Agreement.

5.4 No Liability for Damage, Death or Bodily Injury. Neither City nor any of its commissions, departments, boards, officers, agents, contractors, or employees shall be liable for any damage to the property of LICENSEE, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the DAS/Small Cell Networks or activities authorized by this Agreement, the condition of any City property subject to this Agreement or LICENSEE's use of any City property, except as otherwise provided herein.

5.5 Waiver of All Claims. LICENSEE acknowledges that this Agreement is terminable by the City under limited circumstances as provided herein, and in view of such fact LICENSEE expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial, and LICENSEE expressly assumes the risk of selling its Services which may be affected by the termination of this Agreement. Without limiting any indemnification obligations of LICENSEE or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, LICENSEE fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, boards, Commissioners and employees, and all persons acting by, through or under each of them, under any present or future Laws, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that the City exercises its right to terminate this Agreement, as specifically provided herein.

5.6 No Liability for Consequential or Incidental Damages. LICENSEE expressly acknowledges and agrees that the City will not be liable for any consequential or incidental damages, including, but not limited to, lost profits and loss of good will, arising out of termination of this Agreement or disruption to the DAS/Small Cell Networks or LICENSEE's permitted activities hereunder. The City would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its agents, and LICENSEE expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of LICENSEE or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, LICENSEE fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages (including without limitation, lost profits and loss of good will), and covenants not to sue for such damages, City, its departments, boards, commissions, officers, Commissioners and employees, and all persons acting by, through or under each of them, arising out of this Agreement or the work and activities authorized hereunder, including, without limitation, any interference

with uses conducted by LICENSEE pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence or gross negligence of City or its agents.

5.7 No Interference. LICENSEE shall not unreasonably interfere in any manner with the existence and operation of any and all public and private facilities existing now or in the future, including but not limited to sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, telecommunications facilities, utility, and municipal property without the express grant of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. LICENSEE shall be responsible for repair and restoration of any damage caused by such interference, to the extent it is caused by LICENSEE, to facilities belonging to the City. The City agrees to require the inclusion of the same prohibition on interference as that stated above in all similar type agreements City may enter into after the date hereof.

5.8 Survival of Termination. The provisions of Sections 5.1 through 5.7, inclusive, shall survive any termination of this Agreement.

6.0 INSURANCE

6.1 Amounts and Coverages. LICENSEE will maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

6.1.1 Workers' Compensation, with Employer's Liability limits of not less than One million dollars (\$1,000,000) each accident.

6.1.2 Commercial General Liability Insurance with limits not less than five million dollars (\$5,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Owners and Contractors' Protective, Broadform Property Damage, Products Completed Operations.

6.1.3 Business Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including owned, non-owned and hired auto coverage, as applicable.

6.2 Required Provisions. General Liability and Automobile Liability Insurance shall be endorsed to provide for the following:

6.2.1 Name as additional insureds: the City, its officers, agents and employees.

6.2.2 That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

6.3 Advance Notice of Cancellation. All policies shall be endorsed to provide: thirty (30) days advance written notice to City of cancellation or intended non-renewal, mailed to the following address:

6.4 Claims-Made Policies. Should any of the required insurance be provided under a claims-made form, LICENSEE shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of six (6) years beyond the Agreement expiration, to the effect that, should any occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

6.5 General Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

6.6 Receipt of Certificates of Insurance. Certificates of insurance, in the form and with insurers reasonably satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Agreement, with complete copies of policies promptly upon the City's written request.

6.7 Effect of Approval of Insurance. Approval of the insurance by the City shall not relieve or decrease the liability of LICENSEE hereunder.

6.8 Effect of Lapse of Insurance. This Agreement shall terminate immediately, after written notice to LICENSEE and an opportunity to cure of three (3) Business Days, upon any lapse of required insurance coverage.

7.0 LICENSE FEE, RECORD and DEPOSITS

In connection with the work to be performed and activities to be conducted by LICENSEE under this Agreement:

7.1 Fees for Installation and Operation of DAS/Small Cell-Related, METRO Act-Exempt Facilities, Including Antennas, Supporting Structures for Antennas, Poles, Equipment Shelters or Houses .

Initial Entry Fee: In order to compensate the City for LICENSEE's initial entry upon and deployment of DAS/Small Cell-related, METRO Act-exempt facilities, including antennas, supporting structures for antennas, poles, equipment shelters or houses within the Public Rights-of-Way, LICENSEE shall pay to the City the following administrative fee. For the first year of this Agreement an administrative right of way

fee, in addition to the regular monthly fee referenced below, shall be \$_____, based upon the nature of pole and appurtenant area upgrades and replacements agreed to by the parties. A reasonable portion of these funds can be used for City incurred costs as needed.

Monthly Fee Per LICENSEE or City-owned pole, with LICENSEE-owned Antenna and related structures and equipment: As compensation for the use of any and all structures in the City Public Ways, including poles or other structures and facilities, in whole or in part, whether held in fee or in trust by the City (“City Facility”) or by LICENSEE, LICENSEE shall pay to the City a monthly fee (the “Monthly Fee”) in the amount identified in the schedule set forth immediately below, per site for the use of each such facility or structure, whether City owned or owned by LICENSEE, which is located in the City Public Ways and upon which a DAS/Small Cell Network antenna, or any supporting structure thereof, has been installed pursuant to the other requirements of this Agreement. The aggregate Monthly Fee with respect to each year of the term shall be an amount equal to the number of sites on City-owned rights of way or other property locations or equipment or Facilities on which LICENSEE’s equipment was currently existing during the preceding month, multiplied by the Monthly Fee, prorated as appropriate, and shall be due and payable within 30 Days of the end of each quarter.

The parties to this Agreement do not intend, and this Agreement does not grant, the utilization of any jointly owned or third party-owned properties in fulfillment of this Agreement.

This Agreement anticipates and AUTHORIZES ONLY ONE ANTENNA PER POLE OR STRUCTURE and every antenna as well as related support structure installed by LICENSEE in City Public Ways, shall be subject to a monthly fee as identified in this section:

Schedule of Monthly Fees per antenna or pole or both (not more than one antenna/pole):

\$_____ for new (not pre-existing) poles (e.g., concrete light poles, fiberglass poles, metal poles) other than in downtown districts

\$_____ for new poles in downtown districts, i.e., main intersection poles, in districts where there are buildings of several stories, or other large complexes, within 200 feet of the small cell

\$_____ for the use of ornamental poles in downtown districts.

It is the intent of the parties that all antennas are to be placed on poles only, as described above.

The parties to this Agreement do not intend, and this Agreement does not grant, the utilization or installation of any City-owned public places, buildings or structures other than certain poles in the City Public Ways as specifically identified in Exhibit A.

7.2 Retention of Records. LICENSEE shall at all times keep and maintain full, true and correct business and financial records associated with this Agreement and

provide such records on a quarterly basis in such form as to support the payments made under Section 7.1 above.

7.3 Late Payment Charge. If LICENSEE fails to pay any amounts payable under this Agreement within ten (10) days following the due date thereof, and after written notice of such non-payment, such unpaid amount shall be subject to a late payment charge equal to eighteen percent (18%) of the unpaid amount in each instance. The late payment charge has been agreed upon by the City and LICENSEE, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that the City will incur because of any such failure by LICENSEE, the actual costs thereof being extremely difficult if not impossible to determine.

7.4 Other Payments and Documentation. In addition to all other fees to be paid to the City hereunder, LICENSEE shall timely pay to the City all applicable deposit fees, permit fees, engineering fees and other fees or amounts, required to be paid by LICENSEE to the City in connection with obtaining permits or performing work under this Agreement, and as required by any federal, state or local law, statute, ordinance, rule or regulation. LICENSEE therefore acknowledges and agrees that this Agreement alone is not in and of itself sufficient authorization from the City for the installation and operation of the DAS/Small Cell Networks and that additional documentation and fees may be required by the City, including a METRO Act Permit and any engineering permits.

7.5 Security Deposit/Bond. Prior to performing any work necessary under this Agreement, LICENSEE will deliver to the City a valid performance bond in the sum of _____ thousand dollars (\$_____), issued by a surety company acceptable to the City's Controller in the form attached hereto as Exhibit B. LICENSEE agrees and acknowledges that it will obtain a bond which allows for the use of the bond to cover incidental expenses and costs, damages and fees not covered by any insurance policies including but not limited to: interest, charges by the City to remove DAS/Small Cell Networks and unpaid permit and administrative fees. LICENSEE shall keep such surety bond, at its expense, in full force and effect until the sixtieth (60th) day after the Expiration Date or other termination hereof, to insure the faithful performance by LICENSEE of all of the covenants, terms and conditions of this Agreement. Such bond shall provide thirty (30) days prior written notice to the City of cancellation or material change thereof. In the event of any non-extension of the bond, LICENSEE shall replace such security with another form permitted hereunder at least ten (10) days prior to expiration and if LICENSEE fails to do so the City shall be entitled to present its written demand for payment of the entire face amount of such bond and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by the City shall be returned to LICENSEE upon replacement of the bond or deposit of cash security in the full amount required hereunder. Such bond submitted pursuant to the requirements of a related METRO Permit shall satisfy the bond requirements of this Agreement.

8.0 WORK STANDARDS

8.1 Performance of Work. LICENSEE shall use and exercise due care, caution, skill and expertise in performing all work under this Agreement and shall take all reasonable steps to safeguard and maintain in clean and workmanlike manner, all work site areas, including, without limitation, the light poles located on Public Rights-of-Way and other existing facilities and property. All work to be undertaken by LICENSEE in the Public Ways shall at all times be performed by workers in accordance with generally accepted industry practice.

8.2 Work Plan. Prior to performing any work necessary under this Agreement, LICENSEE shall present a map and written proposal describing the work to be performed and the facilities, methods and materials (if any) to be installed (“Work Plan”) to the City for review and will not perform any work until it has received City Authorization of the Work Plan. In addition, prior to conducting any work in the Public Rights-of-Way, LICENSEE shall provide to the City a current emergency response plan identifying staff who have authority to resolve, twenty-four (24) hours a day, seven (7) days a week, problems or complaints resulting, directly or indirectly, from the DAS/Small Cell Network installed pursuant to this Agreement. As soon as is reasonably practical following installation of the DAS/Small Cell Network, LICENSEE shall deliver as-built drawings to City Hall.

8.3 No Underground Work Without Written Authorization. LICENSEE hereby represents, warrants and covenants that LICENSEE shall perform no excavation, trenching, coring, boring, or digging into the ground or installation of any equipment or other material into the ground, or any other underground work in connection with the work to be performed or Services to be provided by LICENSEE under this Agreement, except to the extent expressly approved by the City. LICENSEE further represents, warrants and covenants that it shall not otherwise disturb or disrupt the operation or maintenance of any sanitary sewers, storm drains, gas or water mains, or other underground conduits, cables, mains, or facilities.

8.4 Repair or Replacement of Damaged Facilities or Property. Upon written request, LICENSEE agrees to repair or replace to City's reasonable satisfaction any City-owned facilities or City-owned property that the City determines has been damaged, destroyed, defaced or otherwise injured as a result of the work performed or Services provided by LICENSEE under this Agreement. LICENSEE shall perform such work at no expense to the City, except to the extent such damage, destruction, defacement, or injury was caused by the sole negligence or willful misconduct of City.

8.5 Modification of Work Plans. If during the term of this Agreement, the City determines that the public health or safety requires a modification of or a departure from the Work Plan submitted by LICENSEE and granted, the City shall have the authority to identify, specify and delineate the modification or departure required, and LICENSEE shall perform the work allowed under this Agreement in accordance with the City-specified modification or departure at LICENSEE's sole expense. The City shall provide LICENSEE with a written description of the required modification or departure,

the public health or safety issue necessitating the modification or departure, and the time within which LICENSEE shall make, complete or maintain the modification or departure required.

9.0 TERMINATION

9.1 Immediate Termination upon Notice in Certain Circumstances. In addition to all other remedies provided by Law or in equity, either party may terminate this Agreement immediately upon written notice to the other party in the event of either of the following:

9.1.1 By City after written notice to LICENSEE and after opportunity to meet with representatives of the City, if the City reasonably determines that LICENSEE's continued use of the Public Ways will adversely affect public health or safety;

9.1.2 By either party (the "Non-Defaulting Party") if the other party has failed to perform any of its material obligations under this Agreement; provided, however, that if the Defaulting Party's failure to perform under or comply with this Agreement is capable of being cured, and if a specific notice or cure period or time for performance of such obligation is not otherwise specified in this Agreement, then the Non-Defaulting Party shall provide the Defaulting Party with a notice of the Defaulting Party's failure to perform or comply and provide the Defaulting Party with thirty (30) days from the date of the notice to cure the failure to perform or comply to the Non-Defaulting Party's reasonable satisfaction; provided, further, that upon the occurrence during the term of this Agreement of two (2) defaults of the same obligation by either Party, the Non-Defaulting Party shall not be required to provide any notice regarding the Defaulting Party's failure to perform such obligation, and any subsequent failure by the Defaulting Party after the Defaulting Party has received two such notices shall constitute a default by the Defaulting Party hereunder without any requirement on the part of the Non-Defaulting Party to give the Defaulting Party notice of such failure or an opportunity to cure.

9.2 Effect of Termination. In the event of termination of this Agreement as herein provided, LICENSEE shall immediately cease all work being performed under this Agreement, excepting only that work necessary for LICENSEE to remove the DAS/Small Cell Networks from the Public Rights-of-Way as provided in Section 3.4 above and repair as needed. Termination of this Agreement by the City as herein provided shall constitute the withdrawal of any grant, consent or authorization of the City for LICENSEE to perform any construction or other work under this Agreement in the Public Rights-of-Way or on public property excepting only that work necessary for LICENSEE to remove all DAS/Small Cell Networks and leave all work site areas in a clean and safe condition and in accordance with Section 3. Upon any such early termination, the City shall promptly remit to LICENSEE a prorated portion of the annual license fee paid to the City, if any.

10.0 NOTICES

Except as otherwise expressly provided in this Agreement, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested, postage prepaid, or reliable commercial overnight courier, return receipt requested, with postage prepaid, to:

CITY

LICENSEE

or to such other address as either City or LICENSEE may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change.

11.0 COMPLIANCE WITH LAWS

11.1 LICENSEE shall comply with all present and future Laws.

11.2 All facilities installed pursuant to this Agreement shall be constructed to comply with all lawful federal, state and local construction and applicable telecommunications requirements.

12.0 MISCELLANEOUS

12.1 Amendments. Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

12.2. Representations and Warranties. Each of the persons executing this Agreement on behalf of LICENSEE does hereby covenant, represent and warrant that, to the best of his or her knowledge, (a) LICENSEE is a duly authorized and existing _____ corporation, has and is qualified to do business in the _____, and has full right and authority to enter into this Agreement, (b) each and all of the persons signing on behalf of LICENSEE are authorized to do so, (c) all financial statements and reports previously provided to the City by LICENSEE are true and complete in all material respects and accurately reflect the financial condition of

LICENSEE as of the date such statements were provided to the City, and LICENSEE's financial condition as of the date it executes this Agreement is not materially worse than that reflected in the most recent of such financial statements and reports, and (d) the DAS/Small Cell Networks installed pursuant to this Agreement shall comply with all applicable FCC standards regarding radio frequencies and electromagnetic field emissions. Upon the City's written request, LICENSEE shall provide the City with evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

12.3 Interpretation of Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

12.4 Assignment; Successors and Assigns. Neither this Agreement nor any part of LICENSEE's rights hereto may be assigned, pledged or hypothecated, in whole or in part, without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of LICENSEE hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed an assignment for the purposes of this Agreement, provided that LICENSEE deliver to the City the following: (1) Bond issued in the name of transferee; (2) Assignment and Assumption Agreement between City and transferee; (3) Certificate of Insurance naming transferee as insured. In the event LICENSEE files a petition in bankruptcy pursuant to 11 U.S.C. Sections 101, et seq., the assignment of this Agreement shall be governed by the provisions of the Bankruptcy Code. An assignment of this Agreement is only enforceable against the City if LICENSEE or its trustee in bankruptcy complies with the provisions of 11 U.S.C. Section 365, including obtaining the authorization from the Bankruptcy Court. City hereby expressly reserves all of its defenses to any proposed assignment of this Agreement. Any person or entity to which the Bankruptcy Court authorizes the assignment of this Agreement shall be deemed without further act to have assumed all of the obligations of LICENSEE arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to City, shall be the exclusive property of City, and shall not constitute property of LICENSEE or of the estate of LICENSEE within the meaning of the Bankruptcy Code.

12.5 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law.

12.6 Governing Law. This Agreement shall be construed and enforced in accordance with the Laws of the State of Michigan.

12.7 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Agreement) contains the entire agreement between the parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Agreement and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

12.8 Time of Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.

12.9 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

12.10 Relationship of Parties. The City is not, and none of the provisions in this Agreement shall be deemed to render the City, a partner in LICENSEE's business, or joint venturer or member in any joint enterprise with LICENSEE. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's prior written consent as provided herein. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

12.11 Most Favored Jurisdiction. Should LICENSEE, after the date that LICENSEE receives all permits and Authorizations necessary to install and operate the network as contemplated in this Agreement, enter into a DAS/Small Cell LICENSE Agreement with another government body, school, or municipality within the State of Michigan which contains financial benefits for such government body, school, or municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's reasonable opinion substantially superior to those in this Agreement, City shall have the right to require that LICENSEE modify this Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise. Any increase in financial benefits in a similar agreement shall be paid to the City retroactive to the date LICENSEE entered into such superior agreement with another entity.

LICENSEE

_____,
a _____

By: _____
Title: _____
Dated: _____

CITY OF EAST GRAND RAPIDS
a Michigan municipal corporation

By: _____
Title: _____
Dated: _____

EXHIBITS

Exhibit A DAS/Small Cell Network Plans and Specs
Exhibit B Bond

10666693_1.doc

METRO Act
Unilateral Form
Revised 12/06/02, as amended
MODIFIED RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT FOR DAS/SMALL CELL SYSTEM LINES ONLY
(Revised by the City of East Grand Rapids on July 28, 2016)

This permit issued this ____ day of _____, 2016 by the City of East Grand Rapids.

1 Definitions

- 1.1 Date of Issuance shall mean the date set forth above.
- 1.2 Manager shall mean Municipality's Manager or his or her designee.
- 1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.4 Municipality shall mean the City of East Grand Rapids, a Michigan municipal corporation.
- 1.5 Permit shall mean this document.
- 1.6 Permittee shall mean _____, organized under the laws of the State of _____ whose address is _____.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas (including poles), equipment shelters or houses, radios, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.
- 1.9 Term shall have the meaning set forth in Part 7.

2 Grant

- 2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A, to construct, install and maintain Telecommunication Facilities (not including antennas, supporting structures for antennas, radios, equipment shelters, poles or houses) on the terms set forth herein.
 - 2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.
 - 2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.
 - 2.1.3 The grant under this permit of access to and use of the Public Right-of-Way is for Telecommunications Facilities only and is not a permit, approval, franchise, lease or license for access to or use of antennas, radios, supporting structures for antennas or radios (including poles), equipment shelters or houses, radios, or any ancillary equipment and miscellaneous hardware that may be in or on the Public Right-of-Way; such access and use must be applied for in a separate application requesting same.
- 2.2 Overlapping. Permittee shall not allow the wires or any other facilities of a third party to be overlapped to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.
- 2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, modify or deny, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

- 3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:
 - 3.1.1 The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is

_____.

- 3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is _____.
- 3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is: _____.
- 3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is _____.
- 3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.
- 3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

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

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

4 Use of Public Right-of-Way

4.1 No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole

expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.
- 4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public

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

- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.
- 4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.
- 4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

- 4.9 Street Vacation If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.
- 4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of 2013; MCL 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.
- 4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively “claim” for this Part 5) (including, without limitation, attorneys’ fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee’s use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality’s acceptance of such self-insurance shall not be unreasonably withheld.
- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).

- 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
 - 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
 - 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
 - 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability,

environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

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

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:
- 7.1.1 Five years from the Date of Issuance; or
 - 7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or
 - 7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
 - 7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
 - 7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

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

9 Fees

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

10 Removal

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

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

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

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

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

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

- 11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.
- 11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,
 - 11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and
 - 11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.
- 11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

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

If to Municipality, to:
City of East Grand Rapids
Attention Doug LaFave
750 Lakeside Drive, SE
East Grand Rapids, Michigan 49506

12.1.1 If to Permittee, to _____.

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

13 Other items

- 13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” or “video service” as defined in 2006 PA 480; MCL 484.3301 et seq., (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).
- 13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.
- 13.3 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act, MCL 484.3105.
- 13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.
- 13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.
- 13.6 Distributed Antenna Systems (DAS): This Permit is not an approval for the installation of any antennas, radios, supporting structures for antennas or radios, equipment shelters, poles or houses, small cell antenna systems or distributed antenna systems (DAS). The Municipality relies on paragraph 1.8 of approved Permit Form as well as MCL 484.3102(j), which specifically excludes such non-approved items from the METRO Act, and thus as not properly subject to this METRO Act Permit.

The Municipality does not interpret the METRO Authority's METRO Act Determination #1 – Distributed Antennae Network Systems, June 2, 2004 as supporting the approval or installation of antennas or supporting structures under a METRO Act permit, as such an interpretation would be in direct conflict with the language of the METRO Act, at MCL 484.3102(j), and paragraph 1.8 of the State-approved Unilateral METRO Act Permit form. This METRO Act permit covers only "telecommunications facilities" as defined in Section 2(j) of the METRO Act.

By granting this permit, the Municipality makes no representations about any subsequent agreement or approval concerning the ability of Permittee to install antennas, supporting structures for antennas, equipment shelters, poles or houses, small cell antenna systems or distributed antenna systems.

City of East Grand Rapids

By: _____
Its: _____
Date: _____

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

[Permittee Name]

By: _____
Its: _____
Date: _____

Exhibit A

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

Exhibit B

Bond

10666702_1.docx



CITY OF EAST GRAND RAPIDS

750 LAKESIDE DRIVE SE • EAST GRAND RAPIDS, MICHIGAN 49506

MEMORANDUM

TO: City Commissioners
 FROM: Amna Seibold, Mayor
 DATE: August 9, 2016
 RE: Appointment to Board of Review

Action Requested: That the City Commission approve the appointment of Bill Graham of 2830 Cascade Road to the Board of Review for a term ending June 30, 2017.

Background: During the recent reappointment process, Martin Green declined to be reappointed to the Board of Review for personal reasons. I am recommending the appointment of Bill Graham to fill this vacancy. Bill served on the Board of Review for several years during his term as a city commissioner and is very familiar with the workings and duties of the Board of Review.

AS/kb/9166



CITY OF
EAST GRAND RAPIDS

750 LAKESIDE DRIVE SE • EAST GRAND RAPIDS, MICHIGAN 49506

KAREN MUSHONG
FINANCE DIRECTOR

MEMORANDUM

TO: Mayor and City Commissioners
FROM: Karen Mushong, Finance Director
DATE: July 28, 2016

RE: ICMA-RC Participation Agreement

Action Requested: The City Commission approve the resolution to adopt the Vantage Trust II Multiple Collective Investment Funds Trust Participation Agreement with ICMA-RC.

Background: In 2008, the City Commission approved resolutions to establish a VantageCare Retirement Health Savings Investment Program (EIP) Plan and Trust with ICMA-RC for retiree health care funding. ICMA-RC is the International City/County Managers Association-Retirement Corporation and also currently administers the defined contribution retirement system for City employees

ICMA-RC is restructuring their existing funds offered into a collective investment trust, which will co-mingle the City's funds with other entities for investment purposes. Overall, this will save the City money due to cost sharing on the investment expenses with other entities in the program. Our existing Vantagepoint Funds are dissolving and if the attached participation agreement is not approved, our current investments will convert into a money market fund.

Historically, the City has invested all of the funds in the most conservative of funds. We are proposing to convert these funds to a 50/50 blend of conservative and moderate funds in order to try and realize greater returns over the long-term. A description of the target risk funds can be found on the next page.

The attached resolution will authorize signing of the Participation Agreement.

Brian Donovan, City Manager

Excerpt from investment options:

VT II Vantagepoint Milestone Funds and VantageTrust II Model Portfolio Funds

The VT II Vantagepoint Milestone Funds are target date funds and the VantageTrust II Model Portfolio Funds are target risk funds. Each invests substantially all of its assets in the single Vantagepoint Milestone Fund (“Milestone Fund”) that shares its investment objective. In turn, each underlying Milestone Fund is a “fund of funds” that invests substantially all of its assets in other Vantagepoint Funds and one or more third party ETFs. Each VantageTrust II Model Portfolio Fund is a “fund of funds” that invests substantially all of its assets in Vantagepoint Funds and one or more third party ETFs. By investing in this way, each Milestone Fund or Model Portfolio Fund is exposed to the risks as well as the potential rewards of its underlying funds and of the portfolio holdings and strategies of those funds.

EIP TARGET RISK FUNDS	
VantageTrust II Model Portfolio Conservative Fund	
	FUND CODE 7202
INVESTMENT OBJECTIVE	To offer reasonable current income and capital preservation, with modest potential for capital growth.
PRINCIPAL INVESTMENT STRATEGIES	The Fund invests in a combination of other Vantagepoint Funds and one or more third party exchange-traded funds (“ETFs”) to seek to obtain exposure to approximately 61% fixed income investments, 30% equity investments, and 9% multi-strategy investments. Multi-strategy investments generally include asset classes and strategies that seek to provide additional diversification from traditional stocks and bonds. Examples may include convertible securities, derivative-based strategies, and real estate investment trusts (REITs).
PRINCIPAL RISKS	Companies, ETF Risks, Interest Rate Risk, Credit Risk, Convertible Securities Risk, High Yield Securities Risk, Mortgage-Backed Securities Risk, Asset-Backed Securities, U.S. Government Agency Securities Risk, Stock Market Risk, Foreign Securities Risk, Emerging Markets Securities Risk, Small-Cap Securities Risk, Mid-Cap Securities Risk, Derivative Instruments Risk, Indexing Risk, Large Investor Risk
EXPENSE RATIO	0.59%
VantageTrust II Model Portfolio Moderate Fund	
	FUND CODE 7201
INVESTMENT OBJECTIVE	To offer moderate capital growth and reasonable current income.
PRINCIPAL INVESTMENT STRATEGIES	The Fund invests in a combination of other Vantagepoint Funds and one or more third party exchange-traded funds (“ETFs”) to seek to obtain exposure to approximately 34% fixed income investments, 54% equity investments, and 12% multi-strategy investments. Multi-strategy investments generally include asset classes and strategies that seek to provide additional diversification from traditional stocks and bonds. Examples may include convertible securities, derivative based strategies and real estate investment trusts (REITs).
PRINCIPAL RISKS	Asset Allocation Risk, Investing in Other Investment Companies, ETF Risks, Stock Market Risk, Foreign Securities Risk, Emerging Markets Securities Risk, Small-Cap Securities Risk, Mid-Cap Securities Risk, Equity Income/Interest Rate Risk, Convertible Securities Risk, High Yield Securities Risk, Interest Rate Risk, Credit Risk, Mortgage-Backed Securities Risk, Asset-Backed Securities Risk, U.S. Government Agency Securities Risk, Derivative Instruments Risk, Indexing Risk, Large Investor Risk
EXPENSE RATIO	0.63%

City of East Grand Rapids
Resolution to Adopt Participation Agreement with ICMA-RC

WHEREAS, the City currently administers a healthcare plan (the Plan) for eligible retirees; and,

WHEREAS, the assets of the Plan are held in trust with ICMA-RC with the City serving as trustee of those assets; and,

WHEREAS, the assets held in trust are for the exclusive benefit of Plan participants, spouses and eligible dependents; and,

WHEREAS, the assets of the Plan shall not be diverted to any other purpose prior to the satisfaction of all liabilities of the Plan; and,

WHEREAS, the investment of the assets shall be directed by the Finance Director with input from the City Manager; and,

RESOLVED, THEREFORE, due to restructuring of the investment funds by ICMA, the City resolves to adopt the Participation Agreement with ICMA-RC for the Vantage Trust II Multiple Collective Investment Funds Trust.

FURTHER RESOLVED that the City Manager is authorized to sign on behalf of the City the Participation Agreement and such other documents as they determine are necessary to accomplish the foregoing.



June 2016

Re: EIP Plan Sponsors – ICMA-RC Fund Restructuring – *ACTION REQUIRED*

Dear EIP Plan Sponsor:

We are writing to tell you about ICMA-RC's restructuring of our proprietary investment options to a Collective Investment Trust (CIT) only structure. We are also writing to explain how that affects your VantageCare Retirement Health Savings-Employer Investment Program (EIP) plan and the steps you need to take. We are very excited about how these changes will benefit your Other Post-Employment Benefit (OPEB) trust.

In order to change to a CIT only structure, the registered Vantagepoint Funds will be liquidated beginning September 16, 2016. Concurrently, we are making available to OPEB trusts we serve a new series of CITs, the VT II Vantagepoint Funds (VT II Funds). We estimate that the CIT only structure will result in savings of up to 20 basis points on assets currently invested in the Vantagepoint Funds and the Dreyfus Cash Management Fund. For example, a plan with \$1 million currently invested among the Vantagepoint Funds and Dreyfus Cash Management Fund will experience savings of up to approximately \$2,000 each year by transferring Vantagepoint Fund assets to the VT II Vantagepoint Funds (VT II Funds).

You must adopt VantageTrust II no later than August 26, 2016 in order to realize the significant savings of the VT II Funds and to avoid Vantagepoint Fund assets in your OPEB trust defaulting to a money market fund on September 16, 2016. Below you will find simple instructions on how to adopt VantageTrust II. Your adoption will serve as instructions to ICMA-RC to transfer EIP assets invested in The Vantagepoint Funds and Dreyfus Cash Management Fund to the corresponding VT II Funds. After adoption, we will transfer assets from The Vantagepoint Funds and Dreyfus Cash Management Fund to the corresponding VT II Funds.

The VT II Funds have the same objectives and strategies as the corresponding Vantagepoint Funds, but at a significant comparative savings. The new funds will continue to provide daily unit values and you will continue to have access to detailed information regarding the VT II Funds through our website and disclosure documents. Transaction instructions for the VT II Model Portfolio Funds will be executed five business days after receipt of instructions in good order and transaction instructions all other VT II Funds will continue to be executed at the end of each business day.

ICMA-RC will manage the transition to the VT II Funds, and keep you informed of the timing and benefits of the transition. Once the transfer is complete, The Vantagepoint Funds and Dreyfus Cash Management Fund will no longer be investment options in your plan.

VantageTrust II Disclosure, Adoption, and Investment Materials

Please review the enclosed information:

- ▶ **VantageTrust II Participation Agreement:** EIP plan sponsors need to review and execute this agreement in order to adopt VT II and become eligible to invest in VT II Funds.
- ▶ **VantageTrust II Declaration of Trust:** The governing document for the operation of VT II. Please review and retain a copy for your records.
- ▶ **VantageCare Employer Investment Program – VantageTrust II Investment Options:** Key information regarding each VT II Fund available to your EIP plan, including fund objective, strategies, asset allocation ranges, risks, and expenses.
- ▶ **Investments Mapping Chart:** Displays the mapping of the transfer of EIP plan assets from the Vantagepoint Funds and the Dreyfus Cash Management Fund to VT II Funds.
- ▶ **VantageTrust II Disclosure Memorandum:** Additional information regarding VT II and the operation of the funds it makes available to investors.

Action Needed to Invest in the VT II Funds

Review and sign the enclosed *VantageTrust II Participation Agreement* and return it to us by:

- ▶ mail, using the enclosed envelope addressed to ICMA-RC, ATTN: Workflow Management Team, P.O. Box 96220, Washington, D.C. 20090-6220;
- ▶ email to planadoptionsservices@icmarc.org; or
- ▶ fax to 202-682-6439, ATTN: Workflow Management Team.

Please remember to keep a copy for your records.

If you have any questions, please contact your ICMA-RC Plan Sponsor Services team at 800-326-7272.

Thank you,



David Tanguay
Senior Vice President, Client Services

Enclosures

VantageTrust II Multiple Collective Investment Funds Trust

Participation Agreement

This Participation Agreement is by and between VantageTrust Company, LLC (“Trust Company”), the trustee of the VantageTrust II Multiple Collective Investment Funds Trust (the “Trust”), and the employer executing this Participation Agreement (“Employer”) on behalf of the retirement plan(s) or retirement trust(s) identified on the signature page and effective as of the date specified at the end of this Agreement (the “Retirement Trust”).

RECITALS

1. The Trust Company maintains the Trust (including each separate investment fund established as a “Fund”) under the Declaration of Trust dated January 1, 2015, and all other attachments thereto, as amended and in effect from time to time (the “Declaration of Trust”), as a medium for the collective investment and reinvestment of assets of certain tax-exempt, governmental pension and profit-sharing plans, and retiree welfare plans within the meaning of section 401(a)(24) of the Internal Revenue Code of 1986, as amended, and related trusts, and other eligible investors that become Participating Trusts under the Declaration of Trust (defined as “Eligible Trust” in the Declaration of Trust).
2. The Retirement Trust desires to become a Participating Trust as defined in the Declaration of Trust.

DEFINITIONS

1. Unless otherwise specified herein, any capitalized word or phrase shall have the meaning as set forth in the Declaration of Trust.

AGREEMENT

In consideration of the foregoing and the promises set forth below, the parties agree to the following:

1. **Appointment and Acceptance.** The Employer hereby acknowledges that the Trust Company has appointed ICMA Retirement Corporation (“Investment Adviser”), an investment adviser registered under the Investment Advisers Act of 1940, as an investment adviser, pursuant to the terms of the Declaration of Trust to provide advice and recommendations to the Trust Company in the management of the Funds. The Employer further acknowledges and accepts that the Trust Company is a wholly owned subsidiary of Investment Adviser.
3. **Adoption of Trust.** The Retirement Trust’s participation in each Fund will at all times be subject to the terms of the Declaration of Trust, which is hereby adopted as a part of the Retirement Trust and this Participation Agreement. The Retirement Trust’s participation in each Fund will also be subject to the terms of the Declaration of Trust.
4. **Acceptance of Plan.** The Trust Company accepts the Retirement Trust (including each plan forming a part thereof) as a Participating Trust as of the date specified on the execution page of this Participation Agreement.
5. **Notice of Disqualification.** In the event that the Retirement Trust ceases to be an Eligible Trust as defined in the Declaration of Trust, then, in the case of any such event, the Employer shall deliver to the Trust Company a written notice of its ceasing to be an Eligible Trust within fifteen (15) calendar days of receipt of any notice, execution of any amendment, receipt of any letter or determination of such cessation. Upon the Trust

Company's receipt of such information, in writing or otherwise, the Retirement Trust's Units shall be redeemed in accordance with the provisions of the Declaration of Trust.

WARRANTIES, REPRESENTATIONS AND COVENANTS OF EMPLOYER AND ELIGIBLE TRUST

1. Employer and Retirement Trust represent and warrant as follows:
 - A. The Retirement Trust meets the definition of an "Eligible Trust" under the Declaration of Trust. This means the Retirement Trust is any of the following:
 - i. a retirement, pension, profit-sharing, stock bonus, or other employee benefit trust that is exempt from Federal income taxation under Section 501(a) of the Code by reason of qualifying under Section 401(a) of the Code; or
 - ii. an eligible governmental plan trust or custodial account under Section 457(b) of the Code that is exempt under Section 457(g) of the Code; or
 - iii. Section 401(a)(24) governmental plans; or
 - iv. any common, collective, or commingled trust fund the assets of which consist solely of assets of eligible investors in a group trust under Revenue Ruling 81-100; or
 - v. an insurance company separate account (i) the assets of which consist solely of assets of eligible investors in a group trust under Revenue Ruling 81-100, (ii) with respect to which the insurance company maintaining the separate account has entered into a written arrangement with the Trust Company consistent with the requirements of Revenue Ruling 2011-1, and (iii) the assets of which are insulated from the claims of the insurance company's general creditors; or
 - vi. any other plan, trust, or other entity that is an eligible investor in a group trust under Revenue Ruling 81-100.
 - B. The Retirement Trust is established, maintained and administered under one or more documents that authorize part or all of the assets of the Retirement Trust to be transferred to, and commingled for investment purposes in, a Trust that meets the requirements of Revenue Ruling 81-100;
 - C. The Declaration of Trust (including each Fund thereunder) is adopted as part of the Retirement Trust;
 - D. Authorization or license from any foreign, federal, state or local regulatory authority or agency required on the part of the Employer or the Retirement Trust has been obtained and any necessary filing with any of the foregoing has been duly made.
2. Employer hereby represents and acknowledges the following:
 - A. It has the requisite authority to enter into this Participation Agreement on behalf of the Retirement Trust, to authorize investments under the provisions of the documents of the Retirement Trust and to make, on behalf of the Retirement Trust, any and all certifications, covenants, representations or warranties set forth in this Agreement.

- B. It has received and reviewed the Declaration of Trust, any addenda thereto, the VantageTrust II Funds Disclosure Memorandum, and any additional materials and information it has requested describing the Trust, and its business and operation, and that in making a prudent investment decision with respect to the contribution of assets to the Trust in exchange for Units, the Employer has relied solely upon independent investigations made, directly or indirectly, by it.
 - C. It has been given the opportunity to review with the Trust Company the terms and conditions of this Participation Agreement and the Declaration of Trust, and to obtain additional information to verify the accuracy of the information contained in the aforesaid materials, and such other information as it desires to evaluate its investment in the Trust.
 - D. The Units of the Fund(s) have not been registered under the Securities Act of 1933, or the applicable securities laws of any states or other jurisdictions.
 - E. Neither the Trust nor any Fund is registered under the Investment Company Act of 1940 and investors are not entitled to the protections of that Act.
 - F. The Units of the Fund(s) are not insured by the Federal Deposit Insurance Corporation or any other type of deposit insurance coverage.
3. Employer agrees promptly to notify the Trust Company in the event that any of the representations set forth above or any information provided pursuant to the provisions hereof ceases to be accurate during the term of this Participation Agreement. Until such notice is given to the Trust Company, the Trust Company may rely on the representations contained in, and all other information provided pursuant to or as contemplated by, this Participation Agreement in connection with all matters related to the Funds and the Trust.

FEES AND EXPENSES

- 1. Fees and expenses incurred with respect to the Trust, including compensation of the Trustee, shall be paid in accordance with the Declaration of Trust.

MISCELLANEOUS

- 1. **Construction.** This Participation Agreement shall be deemed to be executed and delivered in the District of Columbia, and, except to the extent superseded by federal laws, all laws or rules of construction of the District of Columbia shall govern the rights of the parties hereto and the interpretation of provisions of this Participation Agreement.
- 2. **Counterparts.** This Participation Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but the several counterparts shall together constitute one and the same Participation Agreement of the parties hereto.
- 3. **Amendments.** This Participation Agreement shall be automatically amended by any amendment to the Declaration of Trust, and all such amendments shall be automatically incorporated by reference herein, and any provisions of this Participation Agreement inconsistent with the terms of such amendment shall be null and void on and after the effective date of such amendment.
- 4. **Agreement Conflicts.** In the event that any terms of this Participation Agreement conflict with or are in addition to the terms of any Administrative Services Agreement (“ASA”) between the parties, the terms of this Participation Agreement and the Declaration of Trust shall prevail. In the event that the terms of this

Participation Agreement conflict with the terms of the Declaration of Trust, the terms of the Declaration of Trust shall prevail.

5. **Prohibited Transactions.** If the Trust Company determines that the Retirement Trust's involvement with certain assets, liabilities or transactions will result, or has resulted, in the Trust engaging in a transaction that is prohibited by the Internal Revenue Code, Securities Act of 1933, Investment Company Act of 1940 or other applicable law, the Trust Company, in its sole discretion, may take action to correct such prohibited transaction, or may treat the Retirement Trust as having withdrawn from participation and shall redeem the Retirement Trust's Units, all in accordance with the Declaration of Trust.
6. **Severability.** Each clause or term of this Participation Agreement is severable from the entire Participation Agreement, and if any clause or term is declared invalid, the remaining clauses or terms shall remain in effect.

[Space Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date specified below.

VantageTrust II Multiple Collective Investment Funds Trust

By: VantageTrust Company, LLC, as Trustee,



By: Angela Montez
Secretary

Plan/Retirement Trust:

Plan/Retirement Trust Name

ICMA-RC Plan Number

Plan/Retirement Trust Name

ICMA-RC Plan Number

By: _____
Name of Employer or Fiduciary

Customer Number

By: _____
Authorized Officer Signature

Date

Printed Name and Title

Address Line 1

Address Line 2

Telephone Number



CITY OF EAST GRAND RAPIDS

750 LAKESIDE DRIVE SE-EAST GRAND RAPIDS, MICHIGAN 49506

DOUG LA FAVE
ASSISTANT CITY MANAGER

MEMORANDUM

TO: Honorable Mayor and City Commissioners
FROM: Doug La Fave, Assistant City Manager
DATE: 8/5/2016

RE: Consumers Energy-Ramona Substation-Project-Easements

Action Requested: That the City Commission approve a temporary mobile substation and access easement for Consumers Energy for The Department of Public Works Complex/Remington Park property for the Ramona electric utility substation upgrade project.

Background: The current Consumers Energy Ramona substation that provides substantial electric utility service to the City of East Grand Rapids was constructed in 1960. With the age of the existing substation and the increase in demand from East Grand Rapids, the current substation has been at or exceeded output capacity over the past 5 years.

In order to meet the current and future electric utility needs for East Grand Rapids, Consumers Energy is planning to remove and replace the existing Ramona substation with a new substation. The new substation will exist fully within the existing Consumer's Energy utility easement which allows for an increased footprint expansion of approximately 20 feet to the east of what currently exists. The substation project is projected to meet the needs of East Grand Rapids for the next 50-60 years.

The mobile substation and access easements are needed by Consumer's Energy to temporarily access and utilize City property at the Department of Public Works Complex/Remington Park for the temporary substation and associated temporary wires and poles. The temporary substation will provide uninterrupted electric utility service to East Grand Rapids while the existing substation is removed and replaced.

Consumer's Energy will maintain the site with appropriate security fencing. The work will not impact Swaney Field for any athletic events as the area being utilized will be south and east of the field. Consumer's Energy will restore any damaged pavement, sidewalk and grounds and has also provided a landscaping plan to screen the fence line of the substation upon completion of the project.

Mobilization for the project will take place during the month of August with the anticipated start after Labor Day, the week of September 5. The project is anticipated to be completed in March/April of 2017.

Brian Donovan, City Manager

TEMPORARY EASEMENT FOR ELECTRIC SUBSTATION SITE

41-14-28-476-015

Ramona Substation
SAP #16388959

City of East Grand Rapids, 750 Lakeside Drive, SE, East Grand Rapids, Michigan 49506, Grantor, for good and valuable consideration [*exempt from real estate transfer tax pursuant to MCLA 207.505(f) and from State real estate transfer tax pursuant to the provisions of MCLA 207.526(f)*] paid to it by **Consumers Energy Company**, a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201, Grantee, receipt of which Grantor hereby acknowledges, Conveys and Warrants to Grantee, its successors and assigns, the following easements and rights:

Mobile Substation Easement: The easement and right to install, operate, maintain, and remove a temporary mobile electric substation, with associated poles, electric lines and equipment and perimeter fencing (collectively, "the Mobile Substation"), as shown approximately on exhibit A attached, on Grantor's land in the City of East Grand Rapids, County of Kent, and State of Michigan, described as follows:

Part of the East 1/2 of the Southeast 1/4 of Section 28, T7N, R11W, described as: Lot 1 of the Plat of Edgewater, except that part lying Westerly of a line commencing at a point on the northerly line of Lot 3 of the Plat of Edgewater, which is 175 feet Easterly from the Northwest corner thereof and extending Southerly and perpendicular to Robinson Road to a point of ending on the Southerly line of said Lot 1. Part of Tax Parcel ID No. 41-14-28-476-015 (the "Substation Parcel")

Access Easement: The easement and right for access to and from the Mobile Substation on, over, and across the Substation Parcel.

Grantor shall not place any buildings or structures in the Mobile Substation Easement area which interfere with the Mobile Substation or otherwise use the access easement so as to interfere with Grantee's exercise of the above easements.

Consumers Energy shall repair pavement it damages and shall grade and re-seed lawn areas it disturbs.

Consumers Energy shall indemnify and hold Grantor harmless from and against any liability for personal injury or damage to property to the extent proximately caused by Consumers Energy's sole negligence within the Substation Parcel.

This Easement will remain in effect from July 29, 2016 to January 31, 2017 or until the date Grantee removes the Mobile Substation from Grantor's land, whichever is sooner.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized representative this _____ day of _____, 20____.

City of East Grand Rapids, a Michigan
municipal corporation

By _____

By _____

The foregoing instrument was acknowledged before me in Kent County, Michigan, on _____, 20____, by _____, _____ of the City of East Grand Rapids, a Michigan municipal corporation, on behalf of said corporation.

Notary public
_____ County, Michigan
My commission expires _____

Prepared by:
William C. Carlson 7-28-2016
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201-2357

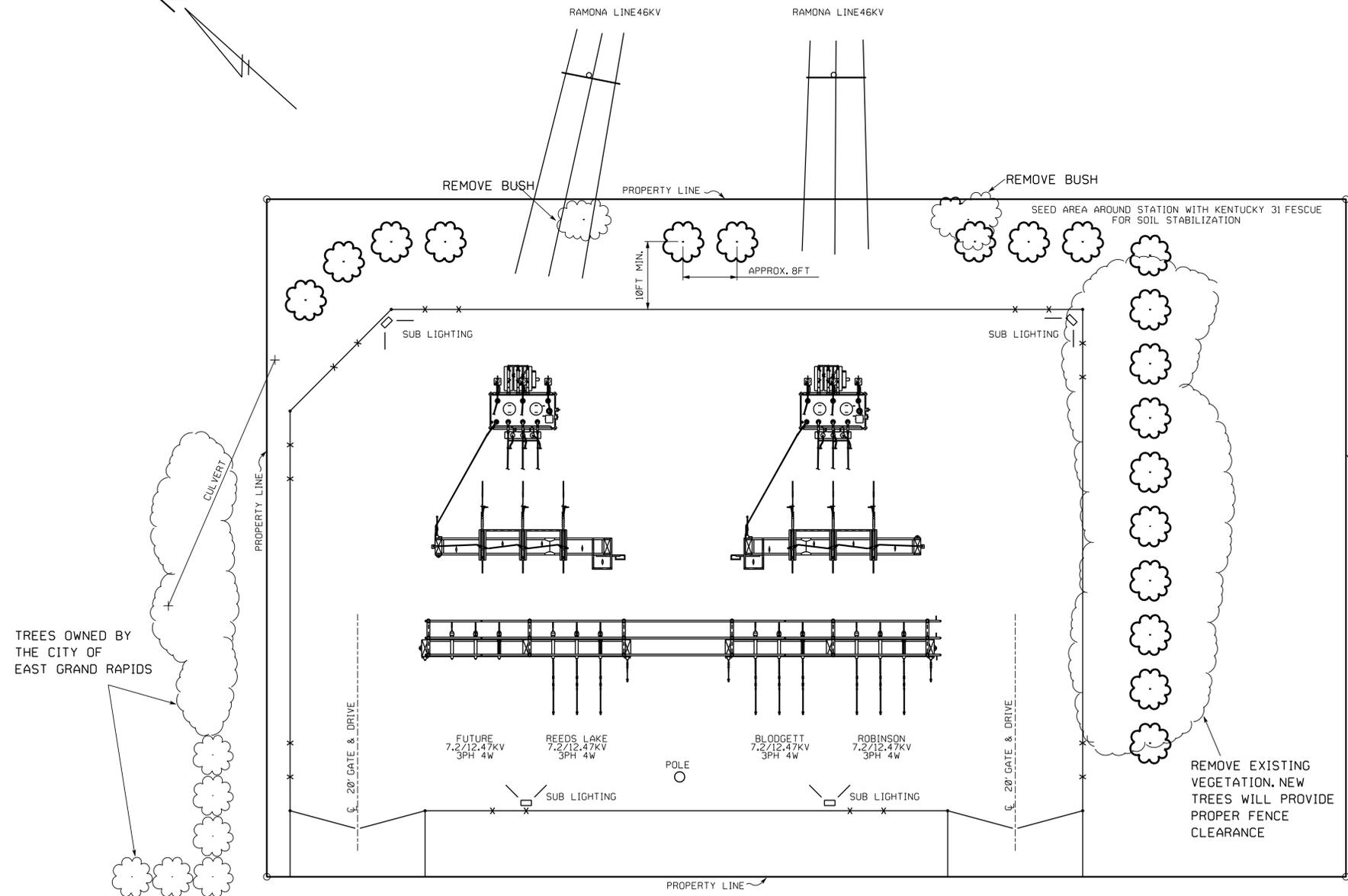
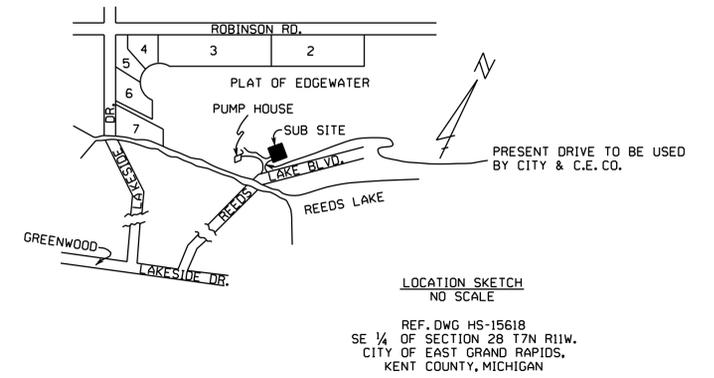
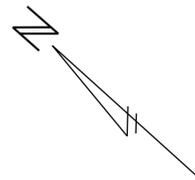
Return recorded instrument to:
Debra Dennis, EP7-473
Consumers Energy Company
One Energy Plaza
Jackson MI 49201-2357



REEDS LAKE BLVD SE

REEDS LAKE

REEDS LAKE BLVD SE



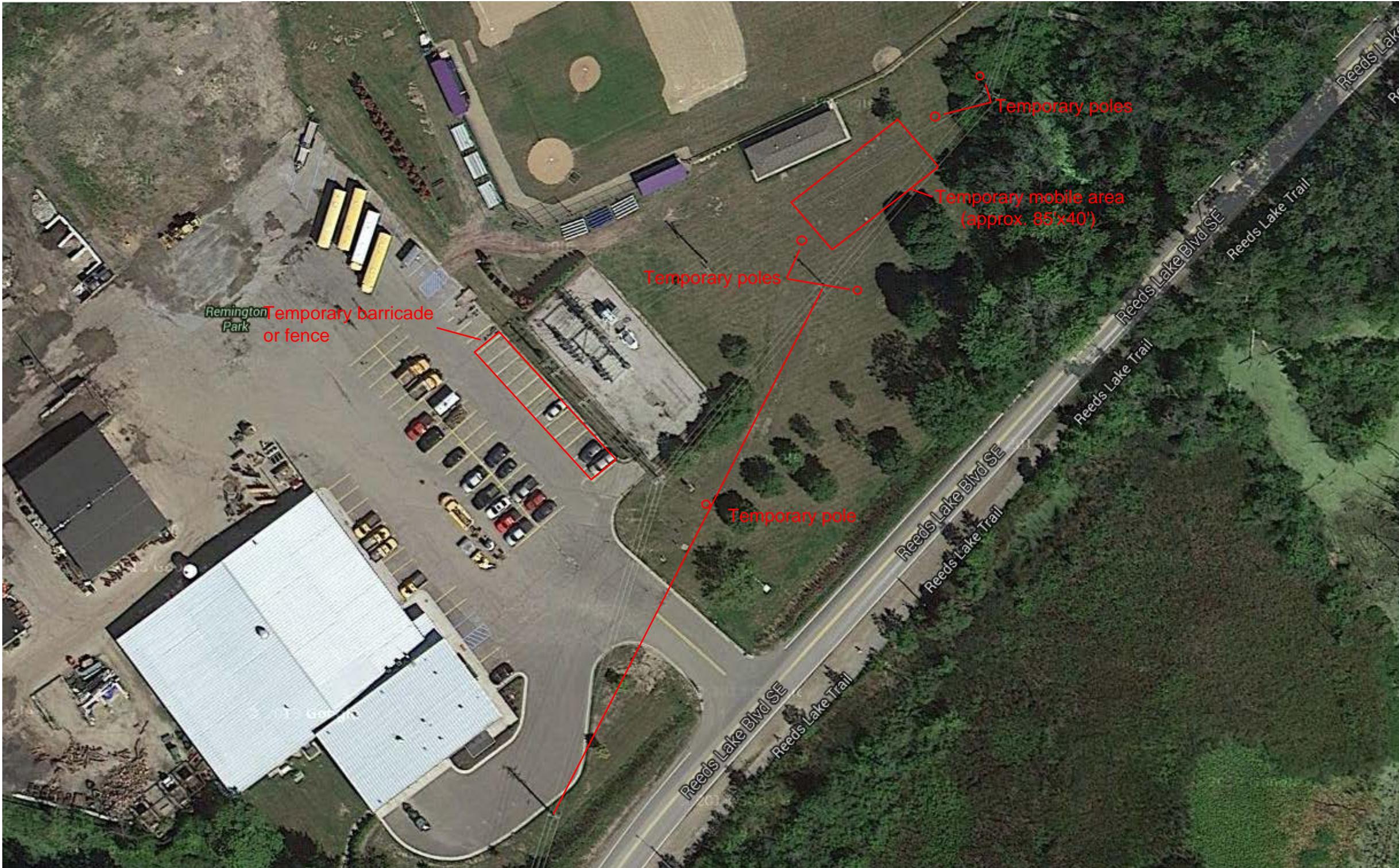
- NOTES:
1. PLANT 19 DEER RESISTANT ARBORVITAE FOR SCREENING. USE SPARTAN JUNIPER OR SIMILAR
 2. PLANTED HEIGHT TO BE A MINIMUM OF 6FT
 3. USE APPROX. 8FT SPACING BETWEEN ADJACENT TREES
 4. INSTALL TREES AT A MINIMUM DISTANCE OF 10FT FROM THE FENCE



REV	DATE	DESCRIPTION	BY	APP	DATE
M	3/25/14	SEE REV NOTE M	WO*18647837	AAP	RWB
L	8-21-97	RMVD OCB CUBICLES & FOUNDATIONS, REPLACE ALL THE FENCE.	- GWO 6738	CSP	RTW



RAMONA		LANDSCAPING PLAN	
SCALE	1"=10'-0"	DRAWING NO.	0568-F34
JOB	GWO 4261	SHEET	1
RS*-56455		REV.	M



Remington Park

Temporary barricade or fence

Temporary poles

Temporary mobile area (approx. 85'x40')

Temporary poles

Temporary pole

Reeds Lake Blvd SE

Reeds Lake Trail



Memorandum

Date: August 15, 2016

To: Honorable Mayor and City Commissioners

From: Mark Herald, Director of Public Safety

Subject: **Purchase of Five (5) Sets of Turn-out Gear**

Action Requested: That the City Commission authorize the purchase of five sets of turn-out gear from Apollo Fire Equipment located in Romeo, Michigan for the amount of **\$9,130.00**.

Background: Our current turn-out gear is either in need of replacement do to wear or has reached its 10 year recommended replacement date based on National Fire Protection Agency (NFPA) Standard 1851. A set of turn-out gear includes bunker pants, suspenders, and a coat. This will be the second year of the 5 year purchase program where we intent on replacing 5 sets of gear. Apollo Fire Equipment guaranteed this year’s purchase at last year’s quoted price. Additionally, the Department wants to maintain uniform turnout gear for consistency and ease of use. As a result, this purchase is a sole source. Funds for this purchase exist in the FY 2016/17 Capital Budget General Fund Account 101-345-9700.

The Finance Committee has reviewed this report and found it in order.

<u>Number:</u>		<u>Unit Cost:</u>		<u>Total Cost:</u>
5	x	\$1,826.00	=	\$9,130.00

Approved: _____
 Brian Donovan, City Manager



CITY OF EAST GRAND RAPIDS

750 LAKESIDE DRIVE SE-EAST GRAND RAPIDS, MICHIGAN 49506

DOUG LA FAVE
ASSISTANT CITY MANAGER

MEMORANDUM

TO: Honorable Mayor and City Commissioners
FROM: Doug La Fave, Assistant City Manager
DATE: 8/1/2016

RE: Bypass Pump Purchase

Action Requested: That the City Commission approve the purchase a bypass pump with hose for water and sewer utility repairs and maintenance in an amount not to exceed \$45,400 from Xylem Inc. of Painesville, OH.

Background: The Department of Public Works is responsible for water and sewer utility maintenance and repairs. Having bypass pump capability is critical to ensure reliable utility service to residents while also minimizing damage to other infrastructure and property. The budgeted amount for this purchase in the capital improvement plan is \$55,000. Staff has solicited quotes from several vendors as follows:

- Xylem Inc.: \$44,644.08 plus shipping
- Kerr Pump: \$45,245.00 plus shipping
- Kennedy Industries: \$52,525.00 plus shipping

Brian Donovan, City Manager

**EAST GRAND RAPIDS
PARKS & RECREATION COMMISSION MEETING
EGR COMMUNITY CENTER
COMMISSION CHAMBERS
6:00 PM
MONDAY, JUNE 13, 2016**

The regular meeting of the Parks and Recreation Commission was held in the City Commission Chambers in the East Grand Rapids Community Center.

Stacey Wykoski called the meeting to order at 6:08 pm.

PRESENT: Brad Andrzejewski, Judith Baxter, Carol Campbell, Mark Hessler, Pam Witting and Stacey Wykoski

ABSENT: Dirk Buth, Brian Miller and Rick Sprague

STAFF: Fred Bunn and Diane Ritzke

Report of Commissioners

Judith Baxter – Judith announced this is her last meeting as a Parks and Recreation Commissioner as the Mayor has not re-appointed her to the Commission. She wanted to thank Fred Bunn for running a great Parks and Recreation Department and thinks it is the best Parks and Recreation Department in the state. She also extended her thanks to the Parks and Recreation staff for their hard work and dedication. Judith remarked she was appointed in 1999 by Mayor Frey, she thanked Mayors Frey, Bartman and Seibold for giving her the opportunity to serve on this board for 17 years. She also thanked former and current Parks and Recreation Commissioners who she served with. She charged the Commission with keeping green spaces in the City.

Brad Andrzejewski – Thanked Judith and Pam for their service on this commission.

Mark Hessler – Thanked Judith and Pam for service on this commission. Reported the EGR School Board has passed the budget for 2016/17. The work at the High School Pool will start on June 13, 2016 and the work at the High School Track will start the week of June 20, 2016.

Pam Witting – Pam announced this is her last meeting as a Parks and Recreation Commissioner as Mayor Seibold did not re-appoint her for another term. She wanted to thank Fred and the Parks and Recreation staff; she has found them to be open, fair, great listeners, great at responding to questions, very caring, innovative and progressive. It has been refreshing working on a Commission that supports that kind of environment. She thanked past and present commissioners as well. She commented she thinks meetings are fair, productive and fun, she hopes this environment continues for this Commission.

Carol Campbell - none

Stacey Wykoski – Thanked Judith and Pam for their service on the Parks and Recreation Commission and will miss their perspective.

Minutes for the April 11, 2016 Parks and Recreation Commission meeting were presented for approval. A motion was made to approve the minutes for the April 11, 2016 Parks and Recreation Commission meeting.

MOTION: Judith Baxter

SUPPORT: Pam Witting

YES: Andrzejewski, Baxter, Campbell, Hessler, Witting, Wykoski (6)

NO: (0)

A presentation of service gifts was made to Pam Witting and Judith Baxter thanking them for their commitment and service on the Parks and Recreation Commission.

Director's Report

Fred Bunn, Director of Parks and Recreation reported on the following:

- Recycling – After meeting with City Manager Brian Donovan and Assistant City Manager Doug LaFave, it was decided the City will start a pilot recycling program that Kent County will help with. Kent County will send information on the types of containers that are available, the program will be limited to John Collins Park to start with, with the possibility of growing depending on how it goes. Fred will ask a representative from Kent County to come and explain the recycling program to the Commission sometime this Fall.
- The Reeds Lake Art Fair will be held this Saturday, June 18, 2016 from 9am-4pm along Wealthy Street in Gaslight Village.
- Concerts in the Park sponsored by United Bank will be starting tonight in John Collins Park. The six concert schedule will be held on Monday nights starting tonight and will continue thru July 25, 2016.
- Movies in the Park will start on Friday, June 17, 2016. Four movies are scheduled for the summer with one movie per month ending on Friday, September 16, 2016.
- The Huntington Bank Reeds Lake Run was held on June 4, 2016 with a total of 1,847 participants.
- July 4th Parade – there will be a new parade route this year due to road construction on Lake/Breton/Lakeside. The route is: Staging the parade on Sherman, going East on Wealthy to Lakeside, turning left on Lakeside past John Collins Park and ending near Lakeside and Reeds Lake Blvd.

Carol Campbell brought up the following regarding Canepa Tennis Courts:

- Reported there are pockmarks on the courts. Fred reported staff is aware of this and Patty Temple from EGR Schools is meeting with the contractors and installers on this issue.
- Reported the children attending the Woodcliff Child Care Program are playing on the tennis courts and pulling, pushing and bouncing on the nets. These actions will destroy the nets. Fred will report this to the schools.
- Inquired about the private lessons that are being offered on the EGR tennis courts. Fred reported Parks and Recreation staff is working with Mickey Mikesell on both group lessons and private lessons.

Stacey Wykoski inquired about the Flag Football Program using Mehney and Memorial Fields on Sundays this spring. Fred reported this was a rental this year.

Brad Andrejewski inquired about a request from a patron for more pool hours at Wealthy Pool. Fred reported that staff has responded to the patron.

The meeting was adjourned @ 6:59 pm.

MOTION: Judith Baxter

SUPPORT: Carol Campbell

YES: Andrzejewski, Baxter, Campbell, Hessler, Witting, Wykoski (6)

NO: (0)