City Council Meeting

January 22, 2019
6:00 p.m.

Cadillac Municipal Complex
Council Chambers
200 N. Lake St.
Cadillac, MI 49601

January 22, 2019 City Council Meeting Agenda
6 p.m. at City Hall – 200 N. Lake St. – Cadillac, MI 49601

We are fully present

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL

I. APPROVAL OF AGENDA

II. PUBLIC COMMENTS

It is requested that comment time be limited to three (3) minutes.

III. CONSENT AGENDA

All items listed on the consent agenda are considered routine and will be enacted by one motion with roll call vote. There will be no separate discussion of these items unless a Council Member so requests it, in which event the items will be removed from the consent agenda and discussed separately.

A. Minutes from the regular meeting held on December 17, 2018.
Support Document III-A

B. Minutes from the closed session held on December 17, 2018.

IV. COMMUNICATIONS

A. Presentation of FY2018 Audit Results by Joe Verlin of Gabridge & Co.

V. APPOINTMENTS

A. City Council Member appointments, regular and alternate, to the Board of Review.

B. Recommendation regarding appointment to the Board of Review.
Support Document V-B

C. Recommendation regarding reappointment to the Zoning Board of Appeals.
Support Document V-C

D. Recommendation regarding reappointment to the Zoning Board of Appeals.
Support Document V-D

E. Recommendation regarding reappointment to the Planning Commission.
Support Document V-E

VI. CITY MANAGER'S REPORT

A. Recommendation Regarding Fiber Network Installation
Support Document VI-A

VII. ADOPTION OF ORDINANCES AND RESOLUTIONS

A. Adopt Resolution for MDEQ Brownfield Grant and Loan for Mitchell-Bentley Redevelopment.
Support Document VIII-A

B. Adopt Resolution for MDEQ Brownfield Grant and Loan Implementation Agreement.
Support Document VIII-B

C. Adopt Resolution for the Mitchell Bentley Redevelopment Brownfield Plan and Set a Public Hearing for February 18, 2019.
Support Document VIII-C

D. Adopt a Resolution to introduce Ordinance Amending the City Zoning Map and Set a Public Hearing for February 4, 2019.
Support Document VIII-D

VIII. MINUTES AND REPORTS OF BOARDS AND COMMISSIONS

A. Planning Commission
Support Document IX-A

B. Wexford County Airport Authority
Support Document IX-B

IX. PUBLIC COMMENTS

It is requested that comment time be limited to three (3) minutes.

X. GOOD OF THE ORDER

XI. CLOSED SESSION

Adjourn to closed session to consult with the City Attorney regarding trial or settlement strategy in connection with Wexford County Circuit Court Consolidated Case Nos. 13-24803-CH and 17-27610-CZ, TeriDee LLC et al. v Clam Lake Township and Haring Charter Township v City of Cadillac and HOP Family, LLC and City of Cadillac v Haring Charter Township and Clam Lake Township. Also to discuss City of Cadillac v. Lake Mitchell Sewer Authority, State of Michigan 28th Judicial Circuit Court, Case #2018-28350-CZ.

XII. ADJOURNMENT

Core Values (R.I.T.E.)
Respect
Integrity
Trust
Excellence

Guiding Behaviors
We support each other in serving our community
We communicate openly, honestly, respectfully, and directly
We are fully present
We are all accountable
We trust and assume goodness in intentions
We are continuous learners

CITY COUNCIL MEETING MINUTES

6:00 PM – December 17, 2018
Cadillac City Hall – 200 N. Lake St. - Cadillac, Michigan 49601

CALL TO ORDER

Mayor Filkins called the City Council meeting to order at approximately 6:00 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

Council Present:	Schippers, Engels, Spoelman, King, Mayor Filkins
Council Absent:	None
Staff Present:	Peccia, Dietlin, Roberts, Ottjepka, Wallace, Coy, Homier, Wasson

APPROVAL OF AGENDA

Mayor Filkins noted the agenda has been amended to add a Fiscal Year 2019 Wellhead Protection Program Grant Agreement between the MDEQ and City of Cadillac as Item VI-C under the City Manager's Report.

2018-231 Approve agenda as amended.
Motion was made by Schippers and supported by Spoelman to approve the agenda as amended.

Motion unanimously approved.

PUBLIC COMMENTS

Santa Claus visited the meeting.

CONSENT AGENDA

2018-232 Approve consent agenda as presented.
Motion was made by Spoelman and supported by Schippers to approve the consent agenda as presented.

Motion unanimously approved.

PUBLIC HEARINGS

A. Public Hearing to consider adoption of Ordinance Amending Ordinance Approving a Lease Agreement with Wexford Genealogy Organization.

   Mayor Filkins opened the public hearing.

   Ron Jacobs, President of the Wexford Genealogy Organization, provided a brief overview of the organization and a list of the materials they have available.

Mayor Filkins closed the public hearing.

2018-233 Adopt Ordinance 2018-12.
Motion was made by Schippers and supported by Engels to approve the resolution to adopt Ordinance Amending Ordinance Approving a Lease Agreement with Wexford Genealogy Organization.

Motion unanimously approved.

B. Public Hearing to consider adoption of Ordinance Amending Ordinance Approving a Lease Agreement with Up North Arts, Inc.

Mayor Filkins opened the public hearing.

Jim Smith, Secretary of the Board for Up North Arts, Inc., provided a brief overview of the organization.

Mayor Filkins closed the public hearing.

King thanked the group for the improvements they have made to the building.

Spoelman asked if the City has reviewed bank records for these organizations.

Peccia stated their bank records have not been reviewed by the City.

Owen Roberts, Director of Finance, stated both organizations have shared some basic financial data with the City.

Spoelman asked if the City is confident they will be able to meet their rent obligations.

Peccia stated it is important to recognize that the City is subsidizing all of the users of the facility. He noted the way the property is protected under the Charter, there are only certain user types that are permitted within the facility. He added that given the condition of the facility there are significant challenges that any user of the facility must overcome. He stated they are optimistic that over time they will become more successful in their endeavors.

Mayor Filkins stated she has seen the synergy between the three (3) groups that occupy the facility.

Spoelman stated she likes the improvements that have been made to the facility. She noted it needs to be sustainable in order to pay the bills, maintain the parking lot, and perform any necessary repairs. She stated removal of the building has been discussed in the past.

Mayor Filkins noted removal of the building would require a referendum of the people.

<u>2018-234 Adopt Ordinance 2018-13</u>.
Motion was made by Engels and supported by Spoelman to approve the resolution to adopt Ordinance Amending Ordinance Approving a Lease Agreement with Up North Arts, Inc.

Motion unanimously approved.

C. Public Hearing to consider adoption of Ordinance Amending Zoning Ordinance Regarding Combination Group/Family Shelters.

John Wallace, Community Development Director, provided a presentation covering the major elements of the proposed ordinance. (see attached)

Wallace noted a map is included to show the RM-1 and RM-2 Zoning Districts. (see attached)

Wallace noted combination facilities would be authorized by special use permits not permitted by right. He stated any application would need to go through the process which includes a public hearing before the Planning Commission.

King asked if the proposed combination facility is approved would New Hope Shelter be required to close their existing shelter facilities.

Wallace stated he believes their intent is close their existing facilities and the Planning Commission could require that the existing facilities be closed because they are not going to be given approval to increase their capacity to more than is needed to address the area homeless.

King asked if that stipulation should be added to the ordinance.

Wallace stated he doesn't believe it is necessary because we would have the legal authority moving forward.

Spoelman inquired about another organization wanting to develop a shelter in the future.

Wallace noted that because it goes through the special use process they would have to demonstrate there wasn't enough capacity in the existing facility. He stated if they could show that there is some group of people that is not being served by that facility then they could apply. He stated they would not be approving redundant spaces to create competition between services serving the homeless.

Peccia stated the current Code requires a demonstration of need to serve the local community.

Spoelman stated there are some homeless people that are really hard to house because they need a lot of support services. She noted there is a possibility that another organization could want to come in and serve that population.

King expressed support for the New Hope Shelter plan. He asked if an organization wanted to develop a halfway house and utilize one of New Hope's old shelters as a preexisting use are they able to do that if that after New Hope moves their population to the new facility.

Wallace noted that if an organization, such as a church, wanted to utilize an existing shelter to house a family it wouldn't be considered a substantial redundancy with New Hope. He added if an organization wanted to develop a 30-40 bed facility, the question would need to be asked if we are oversupplying the market. He stated if someone produces a special need that New Hope doesn't address it could be looked at for approval.

King stated if the use is kept in place when New Hope moves their people out and if someone new came in and wanted to utilize that home, for instance as a family shelter, they can make the criteria to do that. He noted he would want that process included in the event an organization wanted to create a halfway house. He stated the neighborhood might want to be able to state that is not a use that they believe would be appropriate.

Peccia stated he doesn't believe transitional houses can be regulated because they are state licensed facilities.

King asked if the ordinance could be amended to include language stating that as a group moves people into their combination shelter that the use of their old shelter is shuttered so there would have to be a process if another organization wanted to go into that location. He noted he is trying to avoid a "grandfather" issue with that location.

City Attorney Homier stated it depends on the nature of the closing of the existing shelter. He noted if there is a passage of time of non-use and a manifest intent to abandon the use at that site, then depending on what the zoning ordinance would allow at that site it may no longer be a legal non-conforming use. He noted if it is a conforming use it would remain conforming and someone could apply but they would have to show a demonstrated need for that use.

King recommended an amendment to the ordinance stating the existing shelters are declared abandoned for that purpose.

Homier stated it could be included as long as it is not a permitted use in the district in which it is located.

Wallace asked how a special use could be undone since it is connected to the land not the owner.

Homier stated if it is not a permitted use and it is not currently a use permitted by a special use permit then it's arguably a legal non-conforming use. Typically, the ordinance would state if it is discontinued for a period of 1-year then the use may not be reestablished unless it is in conformity with the zoning ordinance except it also has to be paired with a manifest intent to abandon that use.

Peccia asked if the ordinance needs to be modified to capture the concerns expressed by

Council Member King or will it just be handled by the Planning Commission.

Homier stated the Planning Commission could, as a basis of the review and approval, attach a reasonable condition that if this is going to be a replacement shelter that the other shelters need to be closed.

Wallace stated there would likely be a timeframe established for the transition.

King stated the amendment he is requesting is that they agree to deem the property they are transferring people out of as abandoned.

Homier stated it is his understanding that New Hope currently does not have a special use permit so unless its permitted in the zoning ordinance or in the district there has to be one of two uses: a principal permitted use in that district or allowed as a special land use. Otherwise, it is being used as a legal non-conforming use meaning it was used that way before the adoption of any zoning ordinance that regulated the use. That use can continue until such time it is abandoned provided that the zoning ordinance doesn't allow it as a permitted use or as a special use in that district, then that use may not be continued.

Mayor Filkins opened the public hearing.

Mike Figliomeni, representing New Hope Shelter, stated they are asking for amendments to the zoning ordinance that will allow combination group/family shelters. He noted the property they hope to develop is not zoned RM-1 or RM-2. He stated they are open to a conditional rezoning request to address some of the concerns expressed even before they get to the special use permit process.

Mark Mogan, New Hope Shelter Board Member, briefly described the reasons for wanting a consolidated facility. He noted there are currently four (4) houses in the City, two are leased to the hospital and they plan to sell the other two houses to raise funds for the building project.

Steve Cunningham expressed support for the proposed ordinance.

Troy Baxter expressed support for the proposed ordinance.

Bob Rexford expressed support for the proposed ordinance.

Glen Verbrugge expressed support for the proposed ordinance.

Pastor Markham expressed support for the proposed ordinance.

Brian Potter expressed support for the proposed ordinance.

Mayor Filkins closed the public hearing.

King made a motion to adopt the ordinance as presented with the amendment stating that as any organization moves from individual shelters into a group shelter as part of shuttering their old shelter they abandon the use at that time pursuant to zoning and law.

Schippers asked if that is necessary.

Engels stated he supports the idea as a "part two" as mentioned by Mike Figliomeni.

King stated it protects the spirit of what we are trying to do in the centralization and protects the neighborhoods. It gives the neighborhoods the right then if someone else comes in by special use they can approve it but it is not going to be "grandfathered-in" which he believes is important for the community.

Spoelman and Schippers stated they do not like connecting the two issues.

King stated it is regarding a different organization's ability to not have to go through a special use procedure in relation to the property that is being shuttered by the organization.

Schippers asked if the current ordinance states where shelters can be located.

King stated it puts the condition on a new organization that wants to use that property to go through the special use process. If that use is not abandoned when we consolidate there is a prior legal non-conforming use that someone can use that property without going through the special use process.

Schippers asked if he meant that in the areas that were zoned appropriate for shelters they would still have to apply for special use.

King stated we approve them as special use applications.

Spoelman asked if there is any research or any data that talks about whether a shelter of this type is a little intimidating for some people who are homeless.

Mark Mogan, New Hope Shelter Board Member, stated they visited the shelters in Traverse City, Saginaw, Midland, and Holland which all have this consolidated approach. He noted there will be supervision in order to provide a safe environment.

Peccia stated to address the proposed amendment by Council Member King a sentence could be added under Sec. 46-747 – Basis of Determination (4) (e) (1) which states "No application for a combination group/family shelter shall be approved unless the applicant agrees to abandon any other shelters being combined".

Homier stated there could be a situation that a combination group shelter is in response to a demonstrated need that even with the combination group shelter you could maintain the other shelters as part of the need. He noted there could be a need for both without having to close or abandon one.

Spoelman stated we should move forward with the request as presented.

The motion made by Council Member King was not supported.

Motion failed.

<u>2018-234 Adopt Ordinance 2018-14</u>.
Motion was made by Spoelman and supported by Schippers to approve the resolution to adopt Ordinance Amending Zoning Ordinance Regarding Combination Group/Family Shelters.

Ayes: Engels, Schippers, Spoelman, Mayor Filkins
Nays: King

Motion carried.

APPOINTMENTS

A. Recommendation regarding reappointment to the Cadillac Historic Districts Commission.

2018-235 Approve reappointment to the Cadillac Historic Districts Commission.
Motion was made by Engels and supported by King to approve the reappointment of Gwen Dubravec to the Cadillac Historic Districts Commission for a 3-year term to expire on December 31, 2021.

Motion unanimously approved.

B. Recommendation regarding reappointment to the Cadillac Historic Districts Commission.

2018-236 Approve reappointment to the Cadillac Historic Districts Commission.
Motion was made by King and supported by Engels to approve the reappointment of Mark Snider to the Cadillac Historic Districts Commission for a 3-year term to expire on December 31, 2021.

Motion unanimously approved.

CITY MANAGER'S REPORT

A. Calendar Year 2019 Council Meeting Schedule.

Peccia reviewed the proposed the Calendar Year 2019 Council Meeting Schedule:

Regular Council Meetings will be monthly on the first and third Mondays starting at 6:00 p.m. except for the following months.

- January – Schedule one regular meeting for the third Tuesday, January 22, 2019.
  - Due to Christmas, New Years, and Martin Luther King Jr. holidays, City Offices are closed December 24, 25, and 31 2018, and January 1 and 21, 2019 respectively. Additionally, it is common for staff to take vacation and/or personal time off during this timeframe.

- July – Schedule one regular meeting for the third Monday, July 15, 2019.

- Due to the proximity of Independence Day in the first week of the month, it is common for staff to take vacation and/or personal time off during this timeframe, even though the holiday is not on Monday.

- September – Schedule the first meeting of the month for Tuesday, September 3, 2019
  - Due to City Offices being closed on September 2 for Labor Day.

- November – Schedule one regular meeting for the third Monday, November 18, 2019.
  - Due to the City General Election scheduled for Tuesday, November 5, 2019.

Peccia noted special meetings may be requested if the need arises. He added if other elections are scheduled, a recommendation would come forward accordingly requesting the meeting prior be cancelled.

2018-237 Approve Calendar Year 2019 Council Meeting Schedule.
Motion was made by Schippers and supported by Engels to approve the Calendar Year 2019 Council Meeting Schedule as presented.

Motion unanimously approved.

B. Set Fiscal Year 2020 Budget Work Sessions.

Peccia recommended the following dates for the FY2020 Budget Work Sessions:

February 4, 2019 at 4:15 pm - Discuss and Review City Goals and the Capital Improvement Program

March 18, 2019 at 4:15 pm – Discuss Fiscal Year 2020 Annual Operating Budget

2018-238 Approve FY2020 Budget Work Session dates.
Motion was made by Spoelman and supported by Schippers to approve the Fiscal Year 2020 Budget Work Session dates as presented.

Motion unanimously approved.

C. Fiscal Year 2019 Wellhead Protection Grant Agreement between MDEQ and City of Cadillac.

Peccia noted in 2016 the City received a 50/50 Wellhead Protection Grant from the State with a cap of $14,500 for the purpose of documenting impacts the Crosby Rd. Well Field may potentially have on surrounding areas. He stated the study was conducted by Fleis and Vandenbrink.

Peccia stated the City recently received notice that it had been awarded a new 50/50 Wellhead Protection Grant from the State for Fiscal Year 2019 with a cap of $15,000. He noted it is being recommended that competitive bidding be waived to allow Fleis and

Vandenbrink to administer the grant.

2018-239 Approve FY2019 Wellhead Protection Grant Agreement.
Motion was made by Spoelman and supported by Schippers to authorize the Mayor to execute the Wellhead Protection Grant Agreement between the City and the Michigan Department of Environmental Quality.

Motion unanimously approved.

2018-240 Waive competitive bidding regarding FY2019 Wellhead Protection Grant Agreement.
Motion was made by Spoelman and supported by Schippers to waive competitive bidding and appoint Fleis and Vandenbrink to administer the Wellhead Protection Grant.

Motion unanimously approved.

MINUTES AND REPORTS OF BOARDS AND COMMISSIONS

A. Wexford County Airport Authority

PUBLIC COMMENTS

There were no public comments.

GOOD OF THE ORDER

Schippers noted that Harry Yonkman recently passed away. She stated that he had attended and spoke at many Council meetings and will be greatly missed.

King recommended that an Affidavit of Need be provided in the future by organizations that are being subsidized by the City.

Schippers noted the next Mayor's Youth Council meeting will be held at 4:00 pm on December 19, 2018.

CLOSED SESSION

Adjourn to closed session to consult with the City Attorney regarding trial or settlement strategy in connection with Wexford County Circuit Court Consolidated Case Nos. 13-24803-CH and 17-27610-CZ, TeriDee LLC et al. v Clam Lake Township and Haring Charter Township v City of Cadillac and HOP Family, LLC and City of Cadillac v Haring Charter Township and Clam Lake Township and to discuss a confidential written legal opinion with the City Attorney.

2018-241 Adjourn to closed session.
Motion was made by Spoelman and supported by Schippers to adjourn to closed session to consult with the City Attorney regarding trial or settlement strategy in connection with Wexford County Circuit Court Consolidated Case Nos. 13-24803-CH and 17-27610-CZ, TeriDee LLC et al. v Clam Lake Township and Haring Charter Township v City of Cadillac and HOP Family, LLC and City of Cadillac v Haring Charter Township and Clam Lake Township; and to discuss a confidential written legal opinion with the City Attorney; invite Jeff Dietlin, Director of Utilities.

Motion unanimously approved.

2018-242 Return to open session.
Motion was made by Schippers and supported by Engels to return to open session.

Motion unanimously approved.

Peccia made the following statement:

Unfortunately, the Lake Mitchell Sewer Authority ("LMSA") recently informed the City that it does not intend to honor the new contract with the City that was approved by both the City Council and LMSA Board at their September 2017 meetings. After paying under the terms of the contract, in a letter dated November 26, 2018, LMSA Chair Bob Hilty admits that the LMSA Board approved the contract, but he now claims that LMSA has now "rescinded" its approval. The LMSA now wants to renegotiate contract terms that it has already agreed to, and upon which the City and LMSA have relied upon since May 2017. The City has requested that the LMSA mediate the dispute with a neutral third party, but as of today, LMSA has failed or refused to mediate, which is also a breach of the contract.

As many in the public are aware, the City previously contracted with Selma, Cherry Grove, and Clam Lake Townships for sewer services. The City's contract with the Townships expired in May 2017. The City worked hard to negotiate a new agreement with LMSA (an authority created by the Townships) for the City to continue providing sewer services to LMSA's customers in the Townships. In September 2017, the City and LMSA agreed to the material terms of a new 21-year sewer service contract. The sewer rates in the contract reflect the actual cost of the service provided by the City. More importantly, the contract provides a cost structure very similar to what residents of the City pay for service.

The City is disappointed that the LMSA has chosen to act in bad faith by refusing to honor the contract that it approved more than one year ago. Despite this, the City has continuously provided sewer service to the LMSA's customers. The City looks forward to resolving this matter as expeditiously as possible, either directly with the LMSA or through a decision from the court.

He asked the City Council to consider authorizing the City Attorney to file suit against the Lake Mitchell Sewer Authority in Wexford County Circuit Court to compel the LMSA to honor its sewer service contract with the City.

2018-243 Authorize City Attorney to file suit against the LMSA.
Motion was made by Schippers and supported by King to authorize the City Attorney to file suit against the Lake Mitchell Sewer Authority.

Motion unanimously approved.

ADJOURNMENT

Respectfully submitted,

Carla J. Filkins, Mayor

Sandra L. Wasson, City Clerk

January 22, 2019

COUNCIL COMMUNICATION

Re: Appointment to Board of Review – James Walker

James Walker has indicated his interest in being appointed to serve on the Board of Review as a Third Ward Representative.

It is recommended that James Walker be appointed to the Board of Review for a 2 year term, expiring on 1/22/2021.

CITY OF CADILLAC MICHIGAN

Application for Appointment to Standing and Special Committees, Boards & Commissions

The information provided on this form is for the use of the Cadillac City Council in its deliberation to fill vacancies on standing and special committees, boards and commissions. Applications may be submitted at any time and will be kept on file for a period of one (1) year. In most cases, you must be a resident of the City of Cadillac to serve on its committees, boards and commissions. Exceptions include the DDA, CBOA, LDFA, Clam River Greenway Committee and Brownfield Redevelopment Authority. Applicants may be required to interview with the City Manager for appointment consideration.

To which committee, board or commission are you seeking appointment? Please check all that apply.

- ☐ Airport Authority
- ☒ Board of Review
- ☐ Brownfield Redevelopment Authority
- ☐ Cadillac Area Council for the Arts
- ☐ Cadillac-Wexford Transit Authority
- ☐ Cadillac West Corridor Improvement Authority
- ☐ Cemetery Board
- ☐ Civil Service Commission
- ☐ Clam River Greenway Committee
- ☐ Historic Districts Commission
- ☐ Diggins Hill Tennis Court Fundraising Committee
- ☐ Downtown Development Authority
- ☐ Economic Development Corporation
- ☐ Elected Officials Compensation Commission
- ☐ Election Commission
- ☐ Housing Commission
- ☐ Local Development Finance Authority
- ☐ Planning Commission
- ☐ Retirement Board to Administer Act 345
- ☐ Zoning Board of Appeals
- ☐ Construction Board of Appeals
- ☐ Other ______________________

Please print or type:

Name JAMES WALKER Address [redacted]

Telephone: Home [redacted] Business/cell [redacted]

E-mail [redacted] Date available for appointment Flexible

Please complete the following. You may use additional sheets as needed.

Community Service

List boards, commissions, committees or community service organizations that you are currently serving or have served upon, offices held, and in what municipality or county.

Have served on DDA
" " Junior Acheivement

Employment and Education

List any employment experience or education that, in your opinion, best qualifies you for this appointment. List job titles, duties (current and past), level of education and any certificates or degrees you have obtained.

Retired in 2017. Previously employed in supply chain management, purchasing, etc.
B.S. in Business from Ferris State University

Have you ever worked for the City of Cadillac? ☐ Yes ☒ No
If yes, please list dates and names of departments.

Why do you have interest in serving on this board/commission/committee?

Have time now that I am retired and would like to serve the community in some small way.

Personal

Rules of law and ethics prohibit appointees from participating in and voting on matters in which they may have a direct or indirect financial interest. Are you aware of any potential conflicts of interest? ☐ Yes ☒ No

If yes, please indicate potential conflicts.

Are you aware of the time commitment necessary to serve on the committee, board and/or commission to which you seek appointment, and will you have such time? ☒ Yes ☐ No

Please provide information about specific training, education, experience or interests you possess that qualify you as an appointee to the position you seek.

No specific training but I do understand there is training available. My background in purchasing has provided an opportunity to evaluate proposals in a fair and equitable process.

I hereby certify that the preceding information is correct to the best of my knowledge.

Signature James C Walker Date 1/11/19

You are invited to attach additional pages, enclose a copy of your résumé or submit supplemental information that you feel may assist in the evaluation of your application.

Mail or return your completed application to:

Marcus Peccia, City Manager
City of Cadillac
200 N. Lake St.
Cadillac MI 49601

Thank you for giving us the opportunity to consider you for appointment.

January 22, 2019

COUNCIL COMMUNICATION

Re: Reappointment to Zoning Board of Appeals – Louis Nichols

Louis Nichols has indicated his interest in being reappointed to serve on the Zoning Board of Appeals. Louis Nichols has served on the Zoning Board of Appeals since 1992, an impressive 27 years!

It is recommended that Louis Nichols be reappointed to the Zoning Board of Appeals for another 3 year term, expiring on 1/01/2022.

January 22, 2019

COUNCIL COMMUNICATION

Re: *Reappointment to Zoning Board of Appeals – Shari Ault*

Shari Ault has indicated her interest in being reappointed to serve on the Zoning Board of Appeals. Shari Ault has served on the Zoning Board of Appeals for 15 years, originally appointed in 2004.

It is recommended that Shari Ault be reappointed to the Zoning Board of Appeals for another 3 year term, expiring on 1/19/2022.

January 22, 2019

COUNCIL COMMUNICATION

Re: Reappointment to Planning Commission - John Putvin Jr.

John Putvin Jr. has expressed his interest in continuing his service to the Planning Commission for another three year term. He has served an impressive 21 years on the Planning Commission, he was originally appointed in 1998.

It is recommended that John Putvin Jr. be reappointed to the Planning Commission for another 3 year term, expiring on 1/21/2022.

January 22, 2019

Council Communication

Re: Fiber Optic Cable Installation

In May 2017 the City of Cadillac signed an agreement with Merit Network for the provision of internet services over fiber optic cable that would be connected to City Hall. As part of signing a five-year agreement with Merit, they agreed to waive construction and installation costs of $17,250. This construction was required in order to provide approximately 900’ of fiber optic to splice into their current cable at Lake and Nelson Streets.

Subsequent to signing the contract, Merit approached the City in conjunction with work being done at the newly relocated Wexford County Jail in order to gauge the City’s interest in partnering with the County in providing fiber optic connectivity. Over the last year, the City has been working with Merit to explore this opportunity.

Opportunities
Working with Merit, it was determined that a significant opportunity existed for the City to utilize the current process to lay the groundwork for a valuable future project that would connect all ancillary City facilities to the main City data network via a wireless connectivity project. Working together with Merit and leveraging the work they were doing for Wexford County, the City identified the opportunity to have an underground fiber connection directly from the Cadillac Municipal Complex to Merit’s fiber backbone that would provide fiber internet connectivity, and additional fiber lines directly from the Municipal Complex to the Cadillac Water Tower property. A future wireless infrastructure project will then install equipment on the Cadillac Water Tower and ancillary buildings to facilitate direct connections with these buildings. This offers the following service enhancements and cost savings:

- Improved data protection and integrity;
- Eliminate need for internet services to be purchased for all ancillary City facilities. Instead, all facilities will receive internet through City’s primary fiber connectivity at the Municipal Complex;
- All City facilities will be able to connect to main City phone system, eliminating the separate purchase of telephone service lines at these buildings;

Costs
Because of the ability to leverage work already being done for Wexford County by Merit, the City can accomplish this project for a cost of $62,000. This cost includes the fiber backbone for internet services, and the direct fiber link to the water tower to facilitate the future wireless project. This cost is unchanged from when the City Council discussed this project at a budget work session held last April. For reference, the City received a quote of just over $100,000 for installation of the **conduit** only (no fiber cables). This reflects the fact that the partnership with the County’s project allows this project to be undertaken for well less than the cost of doing it independently.

Council Communication
Fiber Optic Cable Installation
January 22, 2019

Recommended Action
Merit Network will contract for all of the underground conduit and fiber line installation required to fund this project. The City will pay Merit a portion of the costs in conjunction with the approval of an Indefeasible Right of Use (IRU) agreement. This long-term agreement reflects the ownership of twelve (12) strands of fiber as part of the project. It is recommended that City Council waive competitive bidding and approve the IRU with Merit Network. The IRU also institutes an annual maintenance fee of $1,250 per year that will require Merit to maintain the City's fiber lines and Merit's associated conduit in order to protect and maintain connectivity.

IRU AND MAINTENANCE AGREEMENT

Merit Service Agreement #20180306-IRU-78234-jbm

THIS IRU and MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of the *day of month year* by and between Merit Network, Inc., a non-profit 501(c)(3) corporation formed under the laws of the State of Michigan with offices located at 1000 Oakbrook Drive, Suite 200, Ann Arbor, MI 48104-6794 ("Grantor") and the City of Cadillac with offices at 200 N. Lake Street, Cadillac, MI, Michigan, 49601 ("Grantee").

RECITALS

A. Grantor has constructed or acquired a fiber-optic communications system as generally described in Schedule I attached hereto.

B. Grantor's fiber-optic communications system includes high fiber count (fiber optic cable).

C. Grantee desires to obtain the indefeasible right to use the number of fibers in the locations identified in Schedule I attached hereto.

D. Grantor desires to grant to Grantee an indefeasible right to use the fibers and other facilities described herein, all upon and subject to the terms and conditions set forth below.

ARTICLE 1.
DEFINITIONS

1.01 "Acceptance Date" shall mean the date when Grantee delivers (or is deemed to have delivered) notice of acceptance of a Completion Notice with respect to the Grantee Fibers in accordance with Article 7.

1.02 "Acceptance Testing" shall have the meaning set forth in Article 7.

1.03 "Affiliate" shall mean, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person ("control," "controlled by" and "under common control with" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise).

1.04 "Associated Property" shall mean the tangible and intangible property needed for the use of the Grantee Fibers as more particularly described in this Agreement, including but not limited to all associated conduits, poles and underlying rights of Grantor as necessary to effectuate this Agreement, but excluding any electronic and/or optronic equipment.

1.05 "BTOP" means the Broadband Technology Opportunities Program administered by the NTIA.

1.06 "Cable" means fiber optic cable along the System Route as identified in Schedule I. The term Cable includes the fiber optic filaments contained in a suitable jacketing and the sheath.

1.07 "Completion Notice" shall have the meaning set forth in Section 7.02.

1.08 "Demarcation Point" means a boundary point located at a splice point where a cable from the Grantee system is joined to the Grantee Fibers. On the side of the Demarcation Point where the Grantee system is located, which shall be called the "Grantee Side," Grantee shall have all responsibility. The other side of the Demarcation Point shall be called the "Network Side," where the Grantee Fibers are located and where Grantor shall have responsibilities and rights set forth herein.

1.09 "Dispute Notice" shall have the meaning set forth in Article 25.

1.10 "Effective Date" shall have the meaning set forth in Section 5.01.

1.11 "Force Majeure Event" shall have the meaning set forth in Article 13.

1.12 "Governmental Authority" shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and sewer authorities.

1.13 "Grantee Fibers" shall have the meaning set forth in Article 3.

1.14 "Grantor Facilities" if this term is used in this Agreement shall mean such facilities as may be mutually agreed upon between Grantor and Grantee pursuant to a separate agreement which are owned, leased or otherwise used by Grantor and which may be used by Grantee to accommodate or house switch equipment, fiber optic transmission and/or associated ancillary equipment or may be used by Grantee as regeneration or amplifier facilities.

1.15 "Grantor System" means the entire communications system assembled by the Grantor along the System Route, including the Cable, structures, rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary for Grantor to obtain in order to permit Grantor to construct, install and maintain the Grantor System. Where appropriate in the context of the use of the term "Grantor System", such system includes the Grantee Fibers.

1.16 "Impositions" shall mean all taxes, fees, levies, imposed duties charges or withholdings of any nature (including without limitation Metro Act fees, ad valorem, real property, and franchise, license and permit fees), together with any penalties, fines or interest thereon imposed upon the Grantor System, or any part thereof, by any Governmental Authority.

1.17 "IRU" shall have the meaning set forth in Article 3.

1.18 "IRU Fee" shall be the fee specified in Schedule I.

1.19 "Licensor" means the grantor, licensor or issuer of any Required Right.

1.20 "Maintenance Fees" shall have the meaning set forth in Article 18.

1.21 "Network Side" means the side of the Demarcation Point on which the Grantee Fibers are located.

1.22 "NTIA" means the National Telecommunications and Information Administration, and agency within the United States Department of Commerce.

1.23 "Person" shall mean any natural person, corporation, partnership, limited liability company, business trust, joint venture, association, company or Governmental Authority.

1.24 "Prime Rate" shall mean, as of any relevant date, the interest rate most recently published in the Money Rates Section of The Wall Street Journal as the prime rate.

1.25 "Proprietary Information" shall have the meaning set forth in Section 17.01.

1.26 "Route Miles" shall mean the actual number of miles, or portion thereof, for the System Route.

1.27 "System Route" shall have the meaning set forth in Section 2.01.

1.28 "Term" shall have the meaning set forth in Article 5.

ARTICLE 2.
SYSTEM ROUTE

2.01 The Grantor System will connect the points as identified on Schedule I attached hereto, and all of which together are herein called the "System Route." Unless otherwise agreed to in writing by the Grantor, the Grantor System will not include expansion of the System Route during the Term of this Agreement to include any additional fiber segments or capacity that are constructed by Grantor or obtained by Grantor from another provider.

ARTICLE 3.
GRANT OF IRU

As of the Effective Date, as defined in Section 5.01, Grantor hereby grants to Grantee, and Grantee hereby acquires from Grantor (i) an exclusive indefeasible right of use in, for the purposes described herein, the number of fibers set forth in Schedule I and any future IRUs of fibers specifically identified and set forth in a subsequent Schedule I addendum to be specifically identified in the Cable (the "Grantee Fibers"); and (ii) an associated and non-exclusive indefeasible right of use, for the purposes described herein, in the Associated Property respecting the System Route (collectively the "IRU").

ARTICLE 4.
FEES

4.01 Grantee agrees to pay, as compensation for the use of the Grantee Fibers, the IRU Fee set forth in Schedule I and any subsequent Schedule I addendum.

4.02 Grantee shall also pay the Maintenance Fee as set forth in Article 18.

4.03 In addition to the foregoing amounts, Grantee shall pay directly or reimburse Grantor for all other reasonable sums, costs, fees and expenses which are expressly provided to be paid by Grantee under this Agreement.

4.04 Grantor will send Grantee an invoice for payment of the IRU Fee and Grantee shall pay such invoiced amount within thirty (30) days after the Acceptance Date. Grantor will send Grantee invoices for payments of the Maintenance Fee as set forth in Article 18, splicing costs as set forth in Section 19.4 and for other reasonable amounts owed by Grantee to Grantor hereunder and Grantee shall pay such invoiced amounts within thirty (30) days after receipt of such invoice by Grantee. Any sums not paid by Grantee when due shall bear interest at the Prime Rate plus two percent (2%).

ARTICLE 5.
TERM

5.01 The IRU with respect to the Grantee Fibers shall become effective on the first day when both (i) the Acceptance Date with respect to the Grantee Fibers has occurred and (ii) Grantor has received payment of the IRU Fee then due to Grantor hereunder (the "Effective Date"). The Term of the IRU for the Grantee Fibers identified in Schedule I or any subsequent Schedule I addendum shall extend to the termination date set forth in Schedule I or the respective Schedule I addendum.

5.02 Upon the termination of the Term or abandonment pursuant to this Article, all rights to the use of the Grantee Fibers therein shall revert to Grantor without reimbursement of any of the IRU Fee or other sums, costs, fees or expenses previously paid, and from and after such time Grantee shall have no further rights or obligations pursuant to this Agreement with respect to the Grantee Fibers, except for payments of amounts due prior to such termination or abandonment and the obligations set forth in Articles 10 and 17.

5.03 This Agreement shall become effective on the date hereof and shall terminate on the date of a termination pursuant to Section 5.04, Article 14, Article 9 Section 9.02, or upon expiration of the Term pursuant to Section 5.01, except that those provisions of this Agreement which are expressly provided herein to survive such termination shall remain binding on the parties.

5.04 If at any time during the Term Grantee determines that the Grantee Fibers have reached the end of their useful life (as determined by Grantee in its sole discretion), or Grantee otherwise desires to not retain the IRU, Grantee shall have the right to abandon all or such portion of the IRU by ninety (90) days written notice to Grantor. In the case of abandonment, Grantee shall not be entitled to a refund of any of the IRU Fee paid or subject to further obligations, except for the payments of amounts due prior to such abandonment and the obligations set forth in Articles 10 and 17.

ARTICLE 6.
REQUIRED RIGHTS

6.01 Grantor represents and warrants that it will in good faith undertake all commercially reasonable efforts to obtain and maintain in full force during the Term all rights, licenses, permits, authorizations, rights-of-way, easements and other agreements which are necessary for Grantor to obtain in order to permit Grantor to construct, install and maintain the Grantor System in accordance with this Agreement (collectively, the "Required Rights"). Grantee represents and warrants that it will obtain, prior to the commencement of the Term, and maintain in full force and effect for and during the Term all rights, licenses, permits, authorizations, rights-of-way, easements, franchises and other approvals which are necessary for Grantee to obtain in order to permit Grantor to grant the IRU to Grantee and for Grantee to use the Grantee Fibers.

6.02 Grantee acknowledges that it has had an opportunity to inspect the documents which created the Required Rights. Grantor's use, access, and right to locate the Grantee Fibers shall be subject to the terms, limitations, conditions and reservations of the Required Rights, and subject to the terms under which the right of way is owned or held by the Licensors granting the Required Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Grantor's obligations are also subject and subordinate to the terms, limitations, conditions and reservations of the Required Rights and prior right of the Licensors of the Required Rights to use the right of way for other business activities, including public road and railroad operations, communications uses, pipeline operations or any other utility purposes. To Grantor's knowledge, such terms, conditions, restrictions, easements, reversionary interests, bonds, mortgages, indentures, or other matters or prior rights, are not unreasonable, unusual, unduly burdensome. Grantor represents that the Required Rights are in full force and effect and that Grantor is not in default and no claim has been made by any Licensor or other holder of Required Rights of any breach or default by Grantor under the Required Rights. Except as expressly set forth herein, nothing herein shall be construed as to be a representation, warranty or covenant of Grantor's right, title or interest with respect to the right of way or the Required Rights.

ARTICLE 7.
ACCEPTANCE TESTING AND COMPLETION

7.01 Merit shall splice the Grantee Fibers according to industry standards. Upon the successful completion of splicing for Grantee Fibers identified in Schedule I or any subsequent Schedule I addendum, Merit shall provide written notice of same to Grantee (a "Completion Notice"). Grantee shall be deemed to have accepted a Completion Notice for the Grantee Fiber specifically identified in the Completion Notice, unless within fifteen (15) days of receipt of a Completion Notice the Grantee rejects the Completion Notice by delivery of written notice to Merit specifying a material failure of the Grantee Fibers to satisfy the requirements of this Agreement. Any failure by Grantee to timely reject a Completion Notice or any use of the Grantee Fibers by Grantee for any purpose other than testing shall be deemed to constitute acceptance for purposes of this Agreement and Grantee shall be deemed to have delivered a notice of acceptance upon such use or on the fifteenth day after failure to timely reject a Completion Notice.

7.02 Grantor shall provide Grantee "as built" drawings of Grantee's Fibers within thirty (30) days after Acceptance or from receipt by Grantor from its construction/engineering contractor(s) whichever is later.

ARTICLE 8.
IMPOSITIONS

8.01 Grantor and Grantee acknowledge and agree that it is their mutual objective and intent to minimize, to the extent feasible, the administrative expenses associated with the Impositions. The parties agree that they will cooperate with each other and coordinate their mutual efforts to achieve such objectives in accordance with the provisions of this Article.

8.02 To the extent that an Imposition is imposed only on the Grantee Fibers and not on the other portions of the Grantor System, due to Grantor's tax-exempt status or otherwise, then the Imposition shall be the sole responsibility of and paid solely by the Grantee. For limited example, except to the extent prohibited by applicable laws or regulations or to the extent Grantee has obtained an exemption therefore, Grantee shall separately file returns for and pay any and all ad valorem property taxes imposed on or assessed against all or any portion of the Grantee Fibers. In the event that applicable laws or regulations require Grantor to file returns for and pay any and all ad valorem property taxes imposed on or assessed against the Grantee Fibers, Grantor shall do so and Grantor shall be entitled to reimbursement from Grantee for the ad valorem property tax payments made respecting the Grantee Fibers.

ARTICLE 9.
USE OF GRANTOR SYSTEM

9.01 Grantee represents and warrants that it will use the Grantee Fibers and the IRU hereunder in compliance with all applicable government codes, ordinances, laws, rules and regulations.

9.02 If Schedule I or any subsequent Schedule I addendum states that the Grantee Fibers are subject to BTOP requirements, Grantee agrees to comply with and acknowledges the requirement to comply with all applicable BTOP requirements. The requirements are summarized in Schedule I. Unless a shorter time frame is imposed by the NTIA, the FCC or the BTOP requirements, within thirty (30) days after written notice of a violation of the BTOP requirements, Grantee shall cure the violation. Notwithstanding any other provision of this Agreement, Grantee agrees and acknowledges that the failure to timely cure a violation of the BTOP requirements will result in an immediate revocation and termination of this Agreement with respect to any of the Grantee Fibers subject to the BTOP requirements and the use of those Grantee Fibers will immediately revert back to the Grantor and upon such revocation and termination the Grantor will not be liable to the Grantee for any compensation, reimbursement, compensation or liability of any kind.

9.03 Subject to the provisions of this Agreement, Grantee may use the Grantee Fibers and the IRU for any lawful purpose. Grantee acknowledges and agrees that it has no right to use any fibers, other than the Grantee Fibers, included or incorporated in the Grantor System. Grantee shall keep any and all of the Grantor System free from any liens, rights or claims of any third party attributable to Grantee.

9.04 Grantee shall not use nor permit any other Persons to use the Grantee Fibers in a way which physically interferes in any way with or otherwise adversely affects the reasonable and customary use of Grantor System or the reasonable and customary use by any other Person of the Grantor System or any electronic or optronic equipment used by such Person in connection with the Grantor System. Grantor shall not use, nor permit any other Persons to use Grantor System in a way which physically interferes in any way with or otherwise adversely affects the reasonable and customary use of Grantee Fibers.

9.05 If Schedule I or any subsequent Schedule I addendum states that the Grantee Fibers are subject to BTOP requirements, Grantee acknowledges that the Grantee Fibers are subject to NTIA's undivided equitable reversionary interest, known as the Federal Interest, for its useful life. Grantee further acknowledges that this Agreement does not transfer to the Grantee legal title to the Grantee Fibers.

9.06 Grantor agrees and acknowledges that it has no right to use the Grantee Fibers during the Term, and that, from and after the Effective Date of the grant of the IRU, Grantor shall keep the Grantee Fibers free from (a) any liens of any third party attributable to Grantor except for any Covenant of Purpose, Use and Ownership of the NTIA, if applicable, and (b) any rights or claims of any third party attributable to Grantor. Grantor shall obtain from any entity in favor of which Grantor in its discretion shall have granted before the date hereof a security interest or lien on all or part of the Grantee Fibers and the IRU a written non-disturbance agreement substantially to the effect that such lienholder acknowledges Grantee's rights and interests in and to the Grantee Fibers, the Associated Property and this Agreement, and agrees that the same shall not be diminished, impaired or interfered with in any adverse respect by such lienholder.

9.07 Grantee and Grantor agree to cooperate with and support each other in complying with any requirements applicable to their respective rights and obligations hereunder by any Governmental Authority.

ARTICLE 10.
INDEMNIFICATION

10.01 Each Party will indemnify, save harmless and defend each other and all of Merit's Members, as well as their respective employees, officers, directors and agents (collectively "Indemnified Parties") from and against any claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including, but not limited to reasonable attorney's fees incurred with or without suit, in arbitration or mediation, on appeal or in a bankruptcy or similar proceeding) (collectively "Claims") threatened, asserted, or filed by a third party against any of the Indemnified Parties to the extent that such third party Claims arise out of or relate to any actual or alleged (i) breach of this Agreement by the Indemnifying Party; or (ii) negligent or tortious act or omission to act of the Indemnifying Party. The Party will also indemnify, save harmless and defend the Indemnified Parties from Claims threatened, asserted, or filed by a third party against any of the Indemnified Parties to the extent that such third party Claims assert that the data content delivered by the Party via the Services constitutes an infringement of any confidential information, trade secret, patent, copyright, trademark, trade name or other legal right of a third party.

10.02 Each Party shall promptly provide the other Party with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

10.03 Each Party expressly recognizes and agrees that its obligation to indemnify, defend, protect and save harmless the other Party is not a condition precedent to the continuing performance of such other Party's obligations, if any, hereunder.

ARTICLE 11
LIMITATION OF LIABILITY

11.01 Notwithstanding any other provision of this Agreement to the contrary, neither Party shall be liable to the other Party for any special, incidental, indirect, punitive or consequential damages, or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with such Party's failure to perform its respective obligations pursuant to this Agreement, including, but not limited to, loss of profits or revenue (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), or claims of end-users or customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including breach of contract, breach of warranty, negligence, or strict liability, all claims for which damages are hereby specifically waived. Nothing contained herein shall operate as a limitation on the right of either Party to bring an action for damages against any third party, including claims for indirect, special or consequential damages, based on any acts or omissions of such third party; provided, however, that a Party shall not make any claim for indirect, special or consequential damages against any third party who, directly or through one or more parties, has a right of indemnification, impleader, cross-claim, contribution or other right of recovery against the other Party.

ARTICLE 12.
INSURANCE

12.01 During the term of this Agreement, Grantee shall obtain during the Term of this Agreement, not less than $2,000,000.00 combined single limit liability insurance for personal injury and property damage.

12.02 Grantee shall be deemed to be in compliance with the provisions of this Article if it maintains an approved self-insurance program providing for retention of up to $1,000,000.00. If Grantee provides the foregoing coverage on a claims made basis, such policy or policies shall be for at least a three (3) year extended reporting or discovery period.

12.03 Unless otherwise agreed, all insurance policies shall be obtained and maintained with companies rated A or better by Best's Key Rating Guide and Grantee shall, upon request, provide Grantor with an insurance certificate confirming compliance with the requirements of this Article.

12.04 Grantee shall obtain from the insurance company(ies) providing the coverage required by this Agreement, the permission of such insurers to allow Grantee to waive all rights of subrogation and Grantee does hereby waive all rights of said insurance companies to subrogation against Grantor, its affiliates, subsidiaries, assignees, officers, directors and employees.

12.05 In the event Grantee fails to maintain the required insurance coverage and a claim is made or suffered, Grantee shall indemnify and hold harmless Grantor from any and all claims for which the required insurance would have provided coverage.

ARTICLE 13.
FORCE MAJEURE

Neither Party shall be in default under this Agreement, and either Party's performance of an obligation (other than the obligation to pay amounts when due) shall be excused and extended, if and to the extent and during the period that any failure or delay in a Party's performance of one or more of its obligations hereunder is proximately caused by any of the following conditions, each of which shall be deemed a "Force Majeure Event": Any act of God; shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; work stoppage or strike; failure of a third party to provide or to recognize a Required Right; any other cause beyond the reasonable control of such Party.

ARTICLE 14.
DEFAULT

14.01 If (i) Grantee makes a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in any reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief; (ii) an involuntary petition in bankruptcy, other insolvency protection against Grantee is filed and not dismissed within 120 days; or (iii) Grantee fails to observe and perform any of its material obligations under the terms and provisions of this Agreement and such failure continues without cure for a period of thirty (30) days after written notice from Grantor (or if such failure is not susceptible of a cure within such thirty (30) day period, cure has not been commenced and diligently pursued thereafter to completion), then Grantor may take any or all of the following actions: If the default consists of a failure of Grantee to pay the IRU Fee, the Maintenance Fee or any other sums, costs, fees and expenses which are expressly provided to be paid by Grantee under this Agreement, Grantor may terminate this Agreement and the Term, in which event Grantor shall have no further duties or obligations hereunder, may retake permanent possession and use of all portions of the Grantor System as to which Grantee had acquired any right of use under this agreement, may remove any electronic, optronic or other equipment of Grantee that is connected to the Grantor System, and may, if Grantee does not make arrangements to take possession of such removed Grantee equipment within thirty (30) days, sell or otherwise dispose of the Grantee equipment in any manner. In the event of any other default hereunder, Grantor may, subject to Article 11, pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including an action for damages, specific performance or injunctive relief.

14.02. If Grantee's breach of this Agreement physically interferes in any way with or otherwise adversely affects Grantor's System or the use by any other Person of the Grantor's System or any electronic or optronic equipment used by Grantor or other Person in connection with the Grantor's System, then Grantee will after notice from the Grantor have two (2) calendar days to cure its breach. Notwithstanding the above, Grantor may immediately take any and all actions to restore Grantor's System and Grantee shall pay Grantor all of its reasonable costs to restore Grantor's system. If Grantee's breach: (a) was the result of willful, wanton and reckless actions or the gross negligence of the Grantee, its employees or or contractors, or (b) was not cured within two-days of the notice, then Grantor may declare a default by the Grantee and terminate the IRU for the Grantee Fibers that are described in the Schedule I or a Schedule I addendum which with caused the interference with or adversely affected the use of Grantor's System and Grantee shall not be entitled to a refund of any of the IRU Fee paid.

14.03 If Grantor's breach of this Agreement physically interferes in any way with or otherwise adversely affects Grantee's system, then Grantor will after notice from the Grantee have two (2) calendar days to cure its breach.

ARTICLE 15.
ASSIGNMENT

15.01 Grantor may assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other Person at any time; provided that Grantor shall not be released from its obligations to Grantee hereunder. Grantor may also sell, transfer, lease, license, grant indefeasible rights of use and enter into similar agreements or arrangements with other Persons respecting any fibers and conduit constituting a part of the Grantor System, other than with respect to the Grantee Fibers.

15.02 Grantee may not assign, encumber or otherwise transfer this Agreement or any of its rights and interests therein to any other Person without the prior written consent of Grantor, which shall not be unreasonably withheld, conditioned or delayed.

15.03. Notwithstanding the prior provisions of Article 15, either party shall have the right, with the prior written consent of the other party, which shall not be unreasonably withheld, conditioned or delayed, to transfer the Agreement to any Person that controls, is under the control of, or is under common control with the assigning party, or any Person into which such party may be merged, consolidated, reorganized or to which all or substantially all of its assets may be sold subject to the other party's rights under this Agreement and any assignee or transferee shall continue to perform the assigning or transferring party's obligations under this Agreement.

15.04 This Agreement and each of the parties' respective rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

ARTICLE 16.
REPRESENTATIONS AND WARRANTIES

16.01 Each party represents and warrants that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body.

16.02 Grantee acknowledges and agrees that Grantee's sole rights and remedies with respect to any defect in or failure of the Grantee Fibers to perform in accordance with the applicable vendor's, contractor's or manufacturer's specifications with respect to the Grantee Fibers, other than a defect or failure resulting from a fiber cut or Grantor's operations and maintenance of the Grantor System or except where such defect or failure is caused by the negligent acts or omissions of Grantor, shall be limited to the particular vendor's, contractor's or manufacturer's warranty. Grantor will assign to Grantee all warranties that pertain to the Grantee Fibers, to the extent that they are assignable. If a warranty is not assignable, Grantor shall undertake commercially reasonable efforts to obtain such maintenance, repair, replacement or other remedial actions by vendors, contractors or manufacturers as may be called for under the terms of any such warranty.

16.03 EXCEPT AS SET FORTH IN THE FOREGOING SECTIONS 16.01, GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GRANTEE FIBERS OR THE GRANTOR SYSTEM, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 17.
CONFIDENTIALITY

17.01 Grantor and Grantee hereby agree that the contents of this Agreement constitute confidential and proprietary information. Except as is expressly permitted under this Article 17, neither party shall disclose any of the contents of this Agreement to any other Person without the prior written consent of the other party. Grantor and Grantee further agree that, in addition to maintaining the confidentiality of the contents of this Agreement, if either party provides any other confidential or proprietary information to the other party (the contents of this Agreement and any other confidential or proprietary information are hereafter collectively referred to as the "Proprietary Information"), all such Proprietary Information shall be held in confidence, and the receiving party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. The parties acknowledge and agree that all information disclosed by either party to the other in connection with or pursuant to this Agreement shall be deemed to be Proprietary Information, provided that verbal information is indicated as being confidential or proprietary when given and promptly confirmed in writing as such thereafter. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the disclosing party, shall be used by the receiving party only for the intended purpose, and such written Proprietary Information, including all copies thereof, shall be returned to the disclosing party or destroyed after the receiving party's need for it has expired or upon the request of the disclosing party. Proprietary Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the disclosing party.

17.02 The foregoing provisions of Section 17.01 shall not apply to any Proprietary Information which (i) becomes publicly available other than through the disclosing party; (ii) is required to be disclosed by a governmental or judicial law, order, rule or regulation; (iii) is independently developed by the receiving party; or (iv) becomes available to the receiving party without restriction from a third party.

17.03 Notwithstanding Sections 17.01 and 17.02 either party may disclose Proprietary Information to its employees, agents, lenders, funding partners and legal and financial advisors and providers to the extent necessary or appropriate in connection with the negotiation and/or performance of this Agreement or in obtaining financing, provided that each such party is notified of the confidential and proprietary nature of such Proprietary Information and is subject to and agrees to be bound by the same restrictions on its use and disclosure.

17.04 Neither party shall issue any public announcement or press release relating to the execution of this Agreement without the prior approval of the other party, which approval shall not be unreasonably withheld.

17.05 In the event either party shall be required to disclose all or any part of this Agreement in, or attach all or any part of this Agreement to, any regulatory filing or statement, each party agrees to discuss and work cooperatively, in good faith, with the other party, to protect, to the extent possible, those items or matters which the other party deems confidential and which may, in accordance with applicable laws, be deleted therefrom and/or otherwise maintained in confidential status.

17.06 The provisions of this Article shall survive the termination of this Agreement for two years.

ARTICLE 18.
MAINTENANCE

18.01 Grantor will perform or cause to be performed the maintenance and repair of the Cable, including the Grantee Fibers on the Network Side of the Demarcation Point and Associated Property. Grantor may enter into necessary contract(s) with fiber maintenance contractors and others to perform these duties. Grantee shall not have any right and shall not perform any activity on the Network Side of the Demarcation Point.

18.02 Grantee will pay an annual Maintenance Fee set forth on Schedule I, in advance, and on a timely basis. The annual Maintenance Fee payment shall be due on the start of the Initial Term and each 12-month period thereafter.

18.03 Grantor will perform or cause to be performed all routine and ordinary maintenance, non-emergency unscheduled maintenance and emergency unscheduled maintenance and repair. Routine and ordinary maintenance shall consist of but not necessarily be limited to pole owners' transfer and reroute requests, structure rehabilitation, fiber repair and replacement, underground relocation requests, road projects, house moves, and other routine maintenance items. Non-emergency unscheduled maintenance consists of any potential service-affecting situation following the Acceptance Date with respect to the Grantee Fibers that is reasonably likely to result at some point in the future in any failure, interruption or impairment in the operation of the Cable, including the Grantee Fibers on the Network Side, that is not covered by routine and ordinary maintenance. Emergency unscheduled maintenance consists of responses, following the Acceptance Date with respect to the Grantee Fibers, to alarm identification, notification of any failure, interruption or impairment in the operation of the Cable, including the Grantee Fibers on the Network Side, or any event or circumstances imminently likely to cause the failure, interruption or impairment in the operation of the Cable, including the Grantee Fibers on the Network Side. All maintenance shall be performed and executed in a customary and workmanlike manner by qualified personnel and consistent with industry accepted standards and in compliance with applicable codes and ordinances.

18.04 As part of routine and ordinary maintenance, Grantor shall ensure that a patrol inspection of the Cable occurs on a quarterly basis throughout the term of this Agreement. The patrol inspection shall consist of a visual inspection of the aerial portion of the Cable and for any underground portion of the Cable the patrol inspection shall inspect for disturbances, changes in surface structures in the area of the underground fiber, pull boxes or building entrance areas. During the patrol inspection, specific attention shall be given to the ownership identification markings.

18.05 As part of routine and ordinary maintenance, Grantor shall also manage the contact with MISS DIG or the "call before you dig" registration organization. Grantor will register with MISS DIG the existing location of the Cable and any modification to the location of any portion of the Cable. Grantor or a maintenance contractor will participate in the marking of facilities as necessary.

18.06 For unscheduled emergency maintenance, Grantor shall maintain personnel and or contractors available twenty-four hours a day, seven days a week, and three hundred sixty-five days a year (24/7/365) for emergency restoration of the Cable, including the Grantee Fibers on the Network Side of the Demarcation Point. Grantee shall contact Grantor through the Grantor emergency call list with respect to the need for unscheduled emergency maintenance. Subject to delay caused by weather, traffic, road conditions and other Force Majeure events, Grantor shall dispatch its crew or its contractors crew to be on-site within 4 hours to begin emergency restoration. Grantor shall use commercially reasonable efforts to complete any unscheduled emergency maintenance within four (4) hours after repair personnel arrive at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so affected may be temporary in nature. In such event, promptly after completion of any such unscheduled emergency maintenance, Grantor will commence its planning for permanent repair within an appropriate time thereafter. Splicing of fibers in an unscheduled emergency or non-emergency maintenance shall, except as otherwise required by law, be performed without discrimination in favor of the strands of Grantee, Grantor or any third party. Grantor shall use commercially reasonable efforts to complete any non-emergency unscheduled maintenance within thirty (30) days after becoming aware of the need for same. Grantee acknowledges that Grantor's access to the facilities covered by Required Rights may be subject to the terms and conditions of the Required Rights.

18.07 Grantor shall use its reasonable efforts to repair any failure, interruption or impairment in the operation of the Cable, including Grantee Fibers on the Network Side of the Demarcation Point. Grantor may require, and Grantee shall arrange for, access to Grantee termination panels to accurately and effectively locate any fiber breaks. Grantee shall provide an after-hour contact list of its employees available to assist Grantor on matters such as building and termination panel access. Coordination is critical for timely repairs of network outages, and Grantee's failure to provide access, as needed, may result in an extension of the repair time. Grantor shall maintain an inventory of materials and equipment necessary to respond to emergency maintenance requests. Grantor reserves the right to make temporary repairs as necessary to promptly restore service to Grantee. Permanent restoration shall be the priority method of repair, unless due to field conditions reasonably beyond the control of Grantor it is not practical.

18.08 In an effort to minimize the impact on the Grantor's and Grantee's business, scheduled service-affecting maintenance will be performed and conducted during a 12 a.m. to 6 a.m. window. If maintenance related issues arise that prevent maintenance teams from completing the maintenance by 6 a.m., then the completion of the maintenance may continue to occur beyond 6 a.m. or will be rescheduled. Grantor will notify the Grantee ten (10) business days prior to any routinely-scheduled service-affecting maintenance.

18.09 Grantor will be responsible to pay for repairs, pole rentals, right of way, compliance relocations "Miss Dig" tickets and other fees and services pertaining to fiber maintenance.

18.10 Grantee is responsible for reporting to Grantor in a timely manner any interruptions or problems with respect to the Grantee Fibers. Grantee will provide Grantor with access to test points to the Grantee Fibers for testing, maintenance and repairs.

18.11 Whenever unscheduled emergency maintenance is required, as soon as Grantor determines that its personnel or contractors will not be able to complete a temporary repair within 24 hours after being notified of the service affecting conditions and the delay in completing the temporary repair is due to the lack of personnel or contractors or needed materials, then Grantor will immediately contact Grantee to identify a reasonable alternative action plan, if any, to address the needed temporary repair. Grantor and Grantee will cooperate to determine the necessary scope of and manner of the work and the charges to be imposed for the work to the extent the foregoing are known or reasonably attainable at the time. In all events and circumstances, Grantor will control and manage the unscheduled emergency maintenance work, whether the work is done by its personnel or contractors or by an alternative contractor, who shall be retained by the Grantor. For the purpose of this paragraph the alternative contractor may include the Grantee. Any alternative contractors must, at a minimum, be pre-approved by Grantor, have provided to Grantor proof of all required insurances and agree to perform all work in a good and workmanlike manner. A representative of Grantor shall be provided a reasonable opportunity to be present and observe the work performed. Grantor shall use its reasonable efforts to obtain adequate access to the physical location(s) where Grantee's Fibers are located, for the purpose of permitting the needed unscheduled emergency maintenance work. Upon completion of any unscheduled emergency maintenance work, Grantor shall pay the alternative contractor pursuant to its separate agreement with the alternative contractor. In no event, shall the Grantor pay more than the reasonable costs incurred for the performance of the unscheduled emergency maintenance work.

18.12 Grantee must promptly notify Grantor of any services, delivered using the Grantee Fibers that are enrolled in the federal Telecommunications Service Priority (TSP) program administered by the U.S. Department of Homeland Security (DHS) National Communications System (NCS) and Federal Communications Commission (FCC).

ARTICLE 19.
<u>FIBER ACCESS</u>

19.01 Grantee may only access Grantee Fibers as set forth in Schedule I or any subsequent Schedule I addendum, provided further that Grantee's access shall not be in violation of any applicable laws, regulations, or otherwise adversely affect the Grantor System and as sound engineering permits.

19.02 Grantee shall be responsible for its own engineering, permitting, easements, design deployment and maintenance expense, for its own infrastructure on the Grantee Side of the Demarcation Point (including but not limited to laterals, equipment, its own splice case, pole attachments and make ready) that is connected to the splice case. Grantor shall have the right to review construction and make ready records, permits, engineering, and insurance on the portion of infrastructure that is immediately connected to the splice case for the purposes of granting access to the splice case. The permitting and engineering for the portion of the Grantee's infrastructure that intersects and connects to the Grantor System shall be made available to Grantor in electronic format. The request by Grantee to add an additional splice case will be processed and completed within fifteen (15) business days, however, the timing may be increased or request denied due to engineering constraints, hazards or impediments that prevent the work from proceeding, or other conditions outside the control of Grantor. While the cost and payment responsibility will be the obligation of the Grantee, Grantor will be responsible for hiring the vendor and directing the work.

19.03 Grantee may not perform mid-span splicing or any other activity relating to the Grantee Fibers on the Network Side of the Demarcation Point. Grantee may submit a written request for mid-span splicing to be performed by Grantor. Approval of a mid-span splicing request is at Grantor's sole discretion; however, approval will not be unreasonably withheld if Grantee's mid-span splicing proposal meets sound engineering standards. If approved, all costs including but not limited to engineering, materials and installation will be borne by the Grantee, but the work will be performed by Grantor or its contractor.

19.04 Grantor is solely responsible for and will control all splice case work associated with Grantee Fibers. All splicing shall be done in full accordance with the Grantor's guidelines and specifications as may be established by Grantor. All work will be done by Grantor or its assigned contractors. Any damages that are caused by unauthorized action may be removed or repaired at the cost of the party causing such damages. Grantee will be responsible for Grantor's entire cost to initiate service to the Grantee Fibers, including splicing costs and the cost estimated by Grantor must be paid to Grantor in advance and Grantor will invoice Grantee for any additional cost which exceeds the estimated cost and shall be paid by the Grantee within 30 days of the invoice.

ARTICLE 20.
ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior agreements relating to the subject matter of this Agreement, which are of no further force or effect. The Exhibits and Schedules referred to in this Agreement are integral parts of this Agreement and are made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

ARTICLE 21.
RELATIONSHIP OF THE PARTIES

The relationship between Grantee and Grantor shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes. Neither Grantee nor Grantor shall (1) assert to any Person that they are on the same network as each other, and (2) use the other's name, insignias or trademarks in any marketing activity.

ARTICLE 22.
COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

ARTICLE 23.
CONSTRUCTION AND INTERPRETATION OF AGREEMENT

The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against either party.

ARTICLE 24.
ENFORCEMENT

If any term or provision of this Agreement, the deletion of which would not materially adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

ARTICLE 25.
DISPUTE RESOLUTION

25.01 If the parties are unable to resolve any dispute arising under or relating to this Agreement, the parties shall resolve such disagreement or dispute as follows:

(i) Either party may refer the matter to management-level representatives of the parties by written notice to the other party (the "Dispute Notice"). Within fifteen (15) days after delivery of the Dispute Notice such representatives of both parties shall meet at a mutually acceptable time and place to exchange all relevant information in an attempt to resolve the dispute.

(ii) If the matter has not been resolved within thirty (30) days after delivery of the Dispute Notice, or if such officers or upper management fail to meet within fifteen (15) days after delivery of such Dispute Notice, either party may initiate mediation in accordance with the procedures set forth in (iii) below. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations for purposes of federal and state rules of evidence.

(iii) If such representatives are unable to resolve the dispute or have failed to meet, the parties agree to participate in a non-binding mediation procedure as follows: (A) a mediator will be selected by having counsel for each party agree on a single person to act as mediator. The parties' counsel, as well as up to three (3) representatives of each of the parties, will appear before the mediator at a time and place determined by the mediator, but not more than sixty (60) days after delivery of the Dispute Notice. The fees of the mediator and other costs of the mediation will be shared equally by the parties. (B) Each party will present a review of the matter and its position with respect to such matter. At the conclusion of both presentations the parties may ask questions of each other. Either party may abandon the mediation procedure at the end of the presentation and question periods.

(iv) If the matter is not resolved after applying the non-binding mediation procedure set forth above, or if either party refuses to take part in the mediation process, the parties may, but are not required to, mutually initiate binding arbitration proceedings to resolve their dispute. Any such arbitration proceedings shall take place in Ann Arbor, Michigan in accordance with the Commercial Arbitration Rules and Procedures of the American Arbitration Association ("Arbitration Rules"), as amended by this Agreement. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. The parties agree that this provision and the arbitrator's authority to grant relief shall be subject to the United States Arbitration Act, 9 U.S.C. §l-16 ("USAA"), the provisions of this Agreement. The parties agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. The arbitrator's decision shall follow the plain meaning of relevant documents, and shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction.

25.02 A party may seek injunctive relief to prevent irreparable harm pending the dispute resolution process above in a federal or state court having geographical jurisdiction over Washtenaw County, Michigan.

ARTICLE 26
TAXES

Grantee shall be responsible for payment of any and all existing or future sales, service, use, or gross receipts taxes levied upon the sums paid by Grantee to Grantor under this Agreement.

ARTICLE 27.
NOTICES

All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by another form of written notification which is capable of providing proof of delivery, sent by prepaid overnight air courier, or sent by registered or certified mail, postage prepaid, return receipt requested, or by email addressed as follows:

IF TO GRANTOR:

Merit Network, Inc.
1000 Oakbrook Drive, Suite 200
Ann Arbor, MI 48104-6794
cfo@merit.edu
Attn: Karen Smith, CFO

with copies to:

Merit Network, Inc.
1000 Oakbrook Drive, Suite 200
Ann Arbor, MI 48104-6794
msc@merit.edu
Attn: MSC

IF TO GRANTEE:
City of Cadillac
200 North Lake Street
Cadillac, Michigan 49601
Attn: Marcus Peccia, City Manager
mpeccia@cadillac-mi.net

with copies to:

Jeff Dietlin, Utilities Director
City of Cadillac
200 North Lake Street
Cadillac, Michigan 49601
utilities@cadillac-mi.net

or at such other address as the party to whom notice is to be given may have furnished to the other party in writing. Any such communication shall be deemed to have been given when delivered if delivered personally, on the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the business day after dispatch if sent by overnight air courier, or on the third business day after posting if sent by mail.

ARTICLE 28.
GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Michigan without reference to its choice of law principles.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written.

___ Please do not include my organization's name or likeness in Merit Network's marketing or advertising campaigns or materials.

GRANTOR:

Merit Network, Inc.

By: ______________________________

Printed Name: Karen Smith

Title: Vice President, Finance & Administration

Date: ______________________________

GRANTEE:

City of Cadillac

By: ______________________________

Printed Name: Marcus Peccia

Title: City Manager

Date: ______________________________

Schedule I

Cadillac, Michigan, Lateral

Merit's System: Merit Network operates a fiber optic network that runs throughout the State of Michigan. Merit's mainline segment runs through the Cadillac area. Merit's mainline segment runs north from the Wexford County Jail *1015 Lincoln St., Cadillac, MI 49601,* to Wexford Missaukee ISD 9907 E 13th St, Cadillac, MI 49601, and Baker College 9600 E 13th St, Cadillac, MI 49601, and then west along 13th street to the corner of 13th street and N Mitchell. Merit has built a lateral from its mainline segment to the new Wexford County Jail with a planned extension from there to the Wexford County Courthouse *437 E. Division St., Cadillac, MI 49601*.

Points: The fiber route begins at the (planned) patch panel designated for the City of Cadillac inside the Cadillac Municipal Complex at 200 North Lake Street, extending to the (planned) patch panel designated for the City of Cadillac inside the Wexford County Courthouse, then to the (planned) patch panel(s) designated for the City of Cadillac inside the Wexford County Jail, then to Merit Splice Case MP4S1-09490-00010 at 13th Street and N. Mitchell, 44.267151,-85.406333.

Cable: Merit's lateral from its mainline segment at the Wexford County Jail to the Wexford County Courthouse and extending to the City of Cadillac Municipal Complex; Merit's lateral from its mainline segment at the Wexford County Jail to the corner of 13th Street and N. Mitchell.

IRU Fibers: Twelve (12) single-mode fiber-optic cable filaments *(fibers TBD, buffer tube TBD)*, from the (planned) patch panel designated for the City of Cadillac inside the Cadillac Municipal Complex at 200 North Lake Street, extending to the (planned) patch panel designated for the City of Cadillac inside the Wexford County Courthouse, then to the (planned) patch panel(s) designated for the City of Cadillac inside the Wexford County Jail, then to Merit Splice Case MP4S1-09490-00010 at 13th Street and N. Mitchell

Grantee Fibers subject to BTOP requirements: YES (see Requirements following)

Grantee Access: Access to the IRU Fibers is allowed along the path between the points indicated above based on existing splice cases, slack loop locations and prudent engineering.

IRU Fee:	Three (3) elements constitute the price of this IRU: 1. $62,000; 2. Execution of the City of Cadillac-Merit Network "Cadillac-Merit Conduit Lease Agreement" in Attachment A of this Agreement; 3. Acceptance of service initiation of Merit Network Service Agreement #20170403-DED-78234-AMM-1 as per Attachment B of this Agreement, "Service Agreement 20170403-DED-78234-AMM-1".
Maintenance Fee:	$1250.00 annually, first year. The Maintenance Fee shall increase annually on the anniversary date of this Agreement by using the Consumer Price Index (U.S. all items, All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics, United States Department of Labor. The Maintenance Fee shall adjust by the same percentage of increase that the CPI-U published immediately prior to each anniversary date of this Agreement has increased over the CPI-U published immediately prior to the date this Agreement was entered.
Term of IRU:	20 years, *ending on 30 October 2038*

BTOP Use and Nondiscrimination and Interconnection Requirements ("Requirements")

(a) In entering into this Agreement, Grantee will use the Grantee Fibers to provide broadband service.

(b) In making use of the Grantee Fibers, Grantee will, consistent with the requirements governing the Broadband Technology Opportunities Program, 75 Fed. Reg. 3792 (Jan. 22, 2010):

> (i) Adhere to the FCC's Open Internet Rules, 47 C.F.R. §§ 8.1 – 8.17, and any subsequent rulings related to such rules;
>
> (ii) Provide Internet connectivity directly or indirectly; and
>
> (iii) Offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties, which shall include both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.

(c) The Parties acknowledge and agree that the requirements in (b) do not apply to any facilities other than the Grantee Fibers, including, but not limited to, any of Grantee's existing network arrangements, except as may otherwise be required by applicable law.

(d) The Parties acknowledge and agree that the FCC's Open Internet Rules referenced in (b)(i) are subject to judicial review in a case currently pending in the United States Court of Appeals for the D.C. Circuit, Verizon v. FCC, No. 11-1355 (D.C. Cir.). The Parties further acknowledge and agree that Grantee will have no contractual obligation to comply with the FCC's Open Internet Rules in the event those rules are vacated or otherwise held to be unlawful by a final court order.

(e) Grantee certifies that it will use the Grantee Fibers to meet its current and reasonably anticipated broadband capacity needs and that it is not entering into this Agreement to acquire unnecessary capacity that would prevent other service providers from providing a competing broadband service. Based on such certification, the Parties acknowledge that Grantee has shown that it would not be technically feasible to offer interconnection pursuant to (b)(iii) above and Grantee shall not be required to comply with this condition.

(f) The Parties acknowledge and agree that any final, non-appealable order issued by either the FCC or NTIA finding that Grantee has violated these Requirements will result in the termination of this Agreement.

January 22, 2019

COUNCIL COMMUNICATION

Re: Mitchell-Bentley Redevelopment

The City received the Mitchell-Bentley property through tax foreclosure and, in conjunction with the Cadillac Industrial Fund and other community partners, has been working to overcome the challenges presented by the contaminated rubble, building remnants, and environmental impact left on the property.

At this time, two critical steps were made in the process of redevelopment: An environmental lien of approximately $350,000 was lifted by the MDEQ; and a $40,000 MDEQ Brownfield Site Assessment Grant was received to determine the nature and extent of contamination and facilitate debris removal. More recently, we have been working with Consumers Energy Company on the potential for the installation of a solar energy facility on approximately 4-acres in the southern portion of the site.

This potential solar development has provided us with the opportunity to secure a MDEQ Brownfield Grant for $650,000 and Loan for $350,000 to remove the contaminated rubble, clear the site, and address pre-existing environmental contamination to position the property for redevelopment. A Brownfield Plan is being proposed to provide revenue to repay the MDEQ Brownfield Loan through the capture of increased incremental revenues generated by additional private investment.

This opportunity requires consideration of three resolutions by the City Council: 1) Resolution for the MDEQ Brownfield Grant and Loan; 2) Resolution to approve a MDEQ Brownfield Grant and Loan Implementation Agreement between the City and Consumers Energy; and 3) Resolution to establish a public hearing for the Mitchell-Bentley Redevelopment Brownfield Plan.

Recommended Action

Adopt the following resolutions to proceed with the redevelopment of the Mitchell-Bentley property:

- **Resolution for MDEQ Brownfield Grant and Loan**
    - A $650,000 grant and $350,000 loan have been set aside by the MDEQ for the Mitchell-Bentley Redevelopment, pending the approval of a resolution by the City Council and submittal of the final MDEQ Brownfield Grant and Loan application, which has been completed. The resolution authorizes the application submittal and, consistent with MDEQ requirements, includes a provision committing the City to repay the Brownfield Loan. As noted below, a Brownfield Plan is begin proposed to provide the revenues to repay the loan, but in case there are not adequate Brownfield Tax Increment Financing (TIF) revenues from additional investment, MDEQ requires the City to commit other funding sources, including but not limited to revenue sharing. However, with the structure of the Brownfield Plan, we believe there will be adequate Brownfield TIF funds to meet any Brownfield Loan obligation.

- **Resolution for MDEQ Brownfield Grant and Loan Implementation Agreement**
    - The MDEQ Application requires a development agreement between the grantee, in this case the City of Cadillac, and the developer, in this case Consumers Energy Company. A draft Implementation Agreement has been shared with Consumers Energy, with a number of their comments incorporated into the draft included in the City Council packet. There may be some additional revisions necessary; therefore tonight's request is for approval of the Implementation Agreement subject to approval as to substance by the City Manager and City Brownfield Consultants, aside from material terms, and subject as to form by the City Attorney.

- **Resolution for the Mitchell Bentley Redevelopment Brownfield Plan Public Hearing**
    - As noted, a Brownfield Plan is being prepared under Public Act 381 to provide Brownfield TIF revenue to repay the MDEQ Brownfield Loan. Public Act 381 requires a public hearing be held by the governing body, with notice to taxing jurisdictions no later than 10-days before the public hearing. The Brownfield Plan is anticipated to be presented and approved by the Cadillac Brownfield Redevelopment Authority at their January 22, 2019 meeting. The following resolution establishes the public hearing date for the February 18, 2019 City Council meeting.

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755

RESOLUTION NO. __________

RESOLUTION AUTHORIZING MDEQ BROWNFIELD GRANT / LOAN APPLICATION FOR MITCHELL BENTLEY REDEVELOPMENT

At a regular meeting of the Cadillac City Council held at Cadillac City Hall, 200 North Lake Street, Cadillac, Michigan on January 22, 2019, at 6:00 p.m., the following resolution was offered by

Councilperson ____ and supported by

Councilperson ____.

WHEREAS the Michigan Department of Environmental Quality provides grants and loans to communities through its Brownfield Redevelopment Grant and Loan program to encourage reuse of brownfield properties by funding environmental response activities, lead and asbestos abatement, and demolition; and

WHEREAS, the redevelopment of the former Mitchell Bentley property in Cadillac for a solar energy facility and industrial development is a partnership between the State of Michigan, the Cadillac Brownfield Redevelopment Authority, the City of Cadillac, the Cadillac Industrial Fund and Consumers Energy Company and environmental activities, lead and asbestos abatement, and demolition are required as part of the redevelopment; and

WHEREAS, the project effectively meets the program criteria of need for financial assistance, local financial commitment, site reuse, and economic development and job creation; and

WHEREAS, the proposed development is consistent with local development plans and City of Cadillac master plan and zoning ordinance; and

WHEREAS, the site for which grant and loan funds are being requested is designated as a "Facility" under Part 201, 1994 Act 451 and neither the Cadillac Brownfield Redevelopment Authority, the City of Cadillac, the Cadillac Industrial Fund, nor Consumers Energy are liable parties; and

WHEREAS, the proposed project will be undertaken if a grant and loan are awarded;

WHEREAS, a portion of the MDEQ financial support may include a Brownfield Loan and, if so, the MDEQ requires that City of Cadillac accepts and commits to repay the loan, based on the terms and conditions of the loan agreement and provide financial assurance;

NOW, THEREFORE, the City Council of the City of Cadillac, Wexford County, Michigan, resolves as follows:

1. The City of Cadillac authorizes the submittal of a Brownfield Redevelopment Grant and Loan application to the Michigan Department of Environmental Quality for environmental response activities, lead and asbestos abatement, and demolition for the redevelopment of the former Mitchell Bentley property for the installation of a solar energy facility and industrial development; and

2. The City of Cadillac accepts and commits to repay the Brownfield Redevelopment Loan up to $350,000, based on the terms and conditions of the loan agreement, with revenues for loan repayment derived from the capture of increased incremental revenues generated by additional private investment through the approval of a Brownfield Plan and Act 381 Work Plan or if adequate Brownfield tax increment revenues are not available, from the City's General Fund, or other City funding sources as appropriate, including but not limited to revenue sharing; and,

3. Should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid.

4. Any prior resolution, or any part thereof, in conflict with any of the provisions of this Resolution is hereby repealed, but only to the extent necessary to give this Resolution full force and effect.

YEAS: ____________________________

NAYS: ____________________________

STATE OF MICHIGAN)
)
COUNTY OF WEXFORD)

I, Sandra Wasson, City Clerk of the City of Cadillac, hereby certify this to be a true and complete copy of Resolution No. ____, duly adopted at a regular meeting of the City Council held on the 22th day of January, 2019.

____
Sandra Wasson, Clerk
Cadillac Municipal Complex
200 Lake Street
Cadillac, Michigan 49601
Telephone No: (231) 775-0181

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755

Mayor
Carla J. Filkins

Mayor Pro-Tem
Shari Spoelman

Councilmembers
Robert J. Engels
Antionette Schippers
Stephen King

RESOLUTION NO. _________

RESOLUTION AUTHORIZING EXECUTION OF THE MDEQ BROWNFIELD GRANT / LOAN IMPLMENTATION AGREEMENT WITH CONSUMERS ENERGY COMPANY FOR MITCHELL BENTLEY REDEVELOPMENT

At a regular meeting of the Cadillac City Council held at Cadillac City Hall, 200 North Lake Street, Cadillac, Michigan on January 22, 2019, at 6:00 p.m., the following resolution was offered by

Councilperson ___________________________________ and supported by

Councilperson _____________________________________.

WHEREAS the Michigan Department of Environmental Quality provides grants and loans to communities through its Brownfield Redevelopment Grant and Loan program to encourage reuse of brownfield properties by funding environmental response activities, lead and asbestos abatement, and demolition; and

WHEREAS, the redevelopment of the former Mitchell Bentley property in Cadillac for a solar energy facility and industrial development is a partnership between the State of Michigan, the Cadillac Brownfield Redevelopment Authority, the City of Cadillac, the Cadillac Industrial Fund and Consumers Energy Company and environmental activities, lead and asbestos abatement, and demolition are required as part of the redevelopment; and

WHEREAS, the City will be responsible for conducting the environmental response activities, lead and asbestos abatement, and demolition under the MDEQ Brownfield Grant and Loan and, once the site is cleared and environmental due care obligations are met, Consumers Energy will construct the solar facility through an easement agreement;

WHEREAS, MDEQ requires a development agreement between the grantee, the City of Cadillac, and the developer, Consumers Energy Company to be executed as part of the MDEQ Brownfield Grant and Loan; and

WHEREAS, a draft MDEQ Brownfield Grant and Loan Implementation Agreement has been drafted with preliminary review by the City and Consumers Energy; and

WHEREAS, the draft Implementation Agreement must be submitted with the MDEQ Brownfield Grant and Loan application;

NOW, THEREFORE, the City Council of the City of Cadillac, Wexford County, Michigan, resolves as follows:

1. The Mayor be authorized to execute the MDEQ Brownfield Grant and Loan Implementation Agreement between the City of Cadillac and Consumers Energy Company for the Mitchell Bentley Redevelopment, subject to the approval as to substance by the City Manager and as to form by the City Attorney.

2. Should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid.

3. Any prior resolution, or any part thereof, in conflict with any of the provisions of this Resolution is hereby repealed, but only to the extent necessary to give this Resolution full force and effect.

YEAS: ____________________________

NAYS: ____________________________

STATE OF MICHIGAN)
)
COUNTY OF WEXFORD)

I, Sandra Wasson, City Clerk of the City of Cadillac, hereby certify this to be a true and complete copy of Resolution No. ____, duly adopted at a regular meeting of the City Council held on the 22th day of January, 2019.

____
Sandra Wasson, Clerk
Cadillac Municipal Complex
200 Lake Street
Cadillac, Michigan 49601
Telephone No: (231) 775-0181

CITY OF CADILLAC

MDEQ BROWNFIELD GRANT AND LOAN IMPLEMENTATION AGREEMENT

This MDEQ Brownfield Grant and Loan Implementation Agreement (the "**Agreement**") is made on _______________ between **CONSUMERS ENERGY COMPANY** (the "**Developer**") and the **CITY OF CADILLAC** (the "**City**"), a Michigan municipal corporation.

PREMISES

A. The Developer is engaged in the redevelopment of the former Mitchell Bentley property at 514 Wright Street in Cadillac, (the "**Development**"), through the installation of a solar energy facility.

B. The City has received a $650,000 Brownfield Grant and $350,000 Brownfield Loan from Michigan Department of Environmental Quality (MDEQ) (the "**MDEQ Brownfield Grant and Loan**") to fund environmental response activities, lead and asbestos abatement, and demolition to prepare the Project Site for the Development, in accordance with the MDEQ Brownfield Grant and Loan Contracts (attached as Exhibit A).

C. The City will be collaborating with the Cadillac Brownfield Redevelopment Authority and the Cadillac Industrial Fund to conduct the necessary activities to position the Project Site for the Development under this Agreement and subsequent development.

D. The purpose of this Agreement is to describe the terms and conditions for the use of the MDEQ Brownfield Grant and Loan for the Development.

In consideration of the premises and the mutual covenants contained in this Agreement, the Developer and the City hereby enter into this Agreement and covenant and agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. The following capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

a) "Agreement" means this MDEQ Brownfield Grant and Loan Implementation Agreement entered into between the City and the Developer.

b) "CBRA" means the Cadillac Brownfield Redevelopment Authority, established by the Cadillac City Council, or its successors.

c) "City" means the City of Cadillac.

d) "City Indemnity" has the meaning set forth in Section 2.3 below.

e) "Contractor" means any general contractor or subcontractor with whom the Developer contracts to complete work at the Project Site.

f) “Developer” means Consumers Energy Company

g) “Developer Indemnity” has the meaning set forth in Section 2.3 below.

h) “Development” means the installation of a 300 to 400 kW solar energy facility on up to 4 acres in the southern portion of the Project Site.

i) “Environmental Consultant” means the environmental consulting firm retained or hired by the City to fulfill all or part its obligations under this Agreement, including the Grant and Loan Eligible Activities set forth in the Grant and Loan Contracts and Brownfield Eligible Activities as set for the in the Brownfield Plan and the Act 381 Work Plan, as amended and supplemented.

j) “Event of Default” means the failure of performance or breach by a party to carry out its obligations under this Agreement or, with respect to a party, if any representation or warranty of such party was materially not accurate when made, and such obligation has not been performed or such representation or warranty corrected within the cure period provide in Article 7 below after written notice thereof has been given by the other party. It also means any filing of bankruptcy or bankruptcy reorganization by the Developer.

k) “Grant and Loan Contracts” means the MDEQ Brownfield Grant and Loan Contracts executed between the MDEQ and the City for the reimbursement of Grant Eligible Activities, a copy of which is attached hereto as Exhibit A.

l) “Grant and Loan Eligible Activities” means those environmental response activities, lead and asbestos abatement, and demolition that are identified in the Grant and Loan Agreements.

m) “Grant/Loan Work Plan” means a detailed work plan submitted to the MDEQ for approval which includes a description of proposed Grant and Loan Eligible Activities, budget and schedule consistent with Appendix A of the Grant and Loan Agreements.

n) “Project Site” mean the former Mitchell Bentley property at 514 Wright Street in Cadillac with the Parcel Identification Number 10-068-00-001-00 upon which the Brownfield Grant and Loan Eligible Activities will be conducted.

o) “Solar Host Agreement” means the Solar Garden Host Agreement between the parties dated _________.

Section 1.2 **<u>Number and Gender</u>**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.

ARTICLE 2.

<u>COVENANTS OF THE DEVELOPER</u>

Section 2.1 **<u>Construction of Development</u>**. The Developer shall proceed with the Development and the obligations under this Agreement in its discretion and pursuant to the terms and conditions of the Host Agreement, which is incorporated by reference. If it decides to do so, Developer shall proceed with due care and diligence and commence and complete the Development in accordance with this Agreement, the Solar Host Agreement and in accordance with any applicable law, regulation, code and ordinance.

Section 2.2 **Compliance with Grant and Loan Agreements**. The Developer shall comply with all terms and conditions of the Grant and Loan Agreements, including but not limited to providing documentation of expenses, and general terms and conditions, so that the Developer may install a Solar Garden Facility on the southern portion of the property pursuant to the Solar Host Agreement.

Section 2.3 **Indemnification**

(a) **Developer Indemnity:** The Developer shall indemnify, defend and hold the City harmless from any loss, damages, costs, expense (including reasonable counsel fees) or liability of any nature due to any and all suits, actions, legal or administrative proceedings, demands or claims arising or resulting from injuries to persons or property to the extent proximately caused by Developer's sole negligence or willful misconduct in the construction, Developer ownership or operation, use or maintenance of the Development.

(b) **City Indemnity**: The City shall indemnify, defend and hold harmless Consumers Energy, and its officers, directors, employees and agents, from and against any and all causes of action, liabilities, losses, claims, demands, damages, penalties, fines, charges, interest, costs, expenses or orders (including, without limitation, attorney and consultant fees and expenses, including court costs and litigation expenses) related to the Development or the Project Site to the extent proximately caused by City's (i) negligence, (ii) willful misconduct or (iii) violation of law or regulation.

(c) If any suit, action or proceeding is brought against any indemnified person, the indemnified person promptly shall give notice to the indemnifying party and the indemnifying party shall defend such indemnified person with counsel selected by the indemnifying party, which counsel shall be reasonably satisfactory to the indemnified person. In any such proceeding, the indemnified person shall cooperate with the indemnifying party and the indemnifying party shall have the right to settle, compromise, pay or defend against any such claim on behalf of such indemnified person, except that the indemnifying party may not settle or compromise any claim if the effect of doing so would be to subject the indemnified person to criminal penalties, unless such indemnified person gives its consent. The indemnifying party shall not be liable for payment or settlement of any such claim or proceeding made without its consent.

(d) Neither the Developer nor the City shall be required to indemnify the other party against loss, damages, costs, expense or liability of any nature which arises solely from the gross negligence or willful misconduct of the other party.

Section 2.4 **Regulatory Compliance**. While on the Project Site or Development, the Developer and any Contractor shall impose work orders on its employees, agents and subcontractors which are designed to assure that they comply with all applicable federal, state and local laws and regulations (including occupational safety and environmental protection statutes and regulations) and shall comply with any directions of governmental agencies relating to site safety, security, traffic or other like matters as it relates to activities performed by the Developer or Contractor, as applicable.

ARTICLE 3.

CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATION

Section 3.1 Conditions Precedent to Developer's Obligations to Construct the Development. The obligations of Developer to construct the Development, as contemplated herein, are subject to the following conditions precedent which must be satisfied by the City as required herein, except as expressly provided in this Agreement or otherwise waived by the Developer:

(a) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer or the City is a party, or threatened against the Developer or the City contesting the validity or binding effect of this Agreement or the validity of the Grant or Loan Agreements, which could result in an adverse decision which would have one or more of the following effects:

(1) A material adverse effect upon the ability of the City to access MDEQ Brownfield Grant funds to repay its obligations under this Agreement.

(2) A material adverse effect on the Developer's or the City's ability to comply with the obligations and terms of this Agreement or the MDEQ Brownfield Grant and Loan Contracts.

(b) There shall have been no Event of Default by the City and no action or inaction by the City eventually which with the passage of time could become an Event of Default.

(c) The City shall have performed all of the terms and conditions to be performed by it pursuant to this Agreement and the Grant and Loan Agreement.

ARTICLE 4.

COVENANTS OF THE CITY

Section 4.1 Execution of the MDEQ Brownfield Grant and Loan Agreements. The City shall execute the Grant and Loan Agreements which will provide for the reimbursement of Grant and Loan Eligible Activities expenses that have been conducted, completed and approved in accordance with the scope and terms of this Agreement and the Grant and Loan Agreement.

Section 4.2 Completion of Eligible Activities. The City will contract with a competent and qualified Environmental Consultant and Contractors to manage and/or conduct and facilitate completion of the Grant and Loan Eligible Activities approved by the MDEQ set forth in this Agreement and the Grant and Loan Agreements, as amended or supplemented, and to assist the Developer in meeting any environmental due diligence requirements under Section 20126(1)(c) and due care obligations under Sec. 20107a of Act 451, PA 1994, in accordance with any MDEQ requirements and approval.

Section 4.3 **Lease of Property.** The City agrees to enter into a easement agreement or arrange for an easement agreement through the Cadillac Industrial Fund up to 4 acres at the southern portion of the Project Site property to the Developer for the installation of a solar energy facility upon completion of the Grant and Loan Eligible Activities by the City, upon mutual agreement of the parties.

ARTICLE 5.

CONDITIONS PRECEDENT TO CITY'S OBLIGATIONS

Section 5.1 **Conditions Precedent to City's Obligation**. The obligations of the City to conduct the Grant and Loan Eligible Activities as contemplated herein shall be subject to the following conditions precedent which must be satisfied by the Developer as required herein, except as expressly provided in this Agreement or otherwise waived in writing by the City.

(a) The Developer shall have performed all of the covenants, obligations, terms and conditions to be performed by it pursuant to this Agreement and all preconditions to the performance of the Developer shall have been satisfied.

(b) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer or the City is a party, or threatened against the Developer or the City contesting the validity or binding effect of this Agreement or the validity of the Grant and Loan Contracts, or which could result in an adverse decision which would have one or more of the following effects:

(1) A material adverse effect upon the ability of the City to receive Grant and Loan funds.

(2) A material adverse effect upon the ability of the Developer to construct the Project.

(3) Any other material adverse effect on the Developer's or the City's ability to comply with the obligations and terms of this Agreement or Grant and Loan Contracts.

(c) There shall have been no Event of Default by the Developer under the terms of this Agreement and no action or inaction by the Developer eventually which with the passage of time would likely become an Event of Default; provided, however, if Developer cures such threatened Event of Default within the time period and according to the provisions of Article 7, this precondition shall be deemed fulfilled as of the time of such cure and, provided that all other preconditions to the City’s obligation have been met at the time of such cure.

(d) There is no change in law which would have one or more of the effects described above.

ARTICLE 6.

REPRESENTATIONS AND WARRANTIES

Section 6.1 **Representations and Warranties of City**. City represents and warrants to the Developer that:

(a) City is a Michigan municipal corporation, with all necessary corporate powers to enter into and perform this Agreement.

(b) The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of the City, and this Agreement constitutes a valid and binding agreement of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or thereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

Section 6.2 **Representations and Warranties of the Developer**. The Developer represents and warrants to the City that:

(a) The Developer is a Michigan Corporation, with power under the laws of the State of Michigan to carry on its business as now being conducted and has the power and authority to consummate the transactions contemplated under this agreement by the Developer.

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Developer, and this Agreement constitutes a valid and binding agreement of the Developer in accordance with its terms, except as enforce ability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity.

(c) The Developer or its Contractors shall not use the Project Site for the storage, treatment or disposal of hazardous or toxic wastes of unaffiliated third parties and shall comply with all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees and orders in connection with any use of the Project Site and shall obtain all necessary permits in connection therewith.

(d) The Developer will comply with all obligations, covenants and conditions required of it or its agents or Contractors under the terms of this Agreement.

(f) The Developer has not made any misrepresentation of fact in the inducement or in the performance or administration of this Agreement.

ARTICLE 7.

DEFAULT, REMEDIES, AND TERMINATION

Upon the occurrence of an Event of Default, and failure to cure such Event of Default within 60 days of written notice of such Event of Default, the non-defaulting party may terminate this agreement by giving written notice to the defaulting party, provided, however, that if such Event of Default requires more than 60 days to cure, and if such defaulting party shall commence and diligently proceed to cure the Event of Default within such 60 days, then the defaulting party shall have an additional 60 days to cure the Event of Default. A monetary default shall be cured within 15 days. If the Event of Default is not cured within this time period, then the non-defaulting party shall have the right to terminate this Agreement or, at the election of such non-defaulting party, may obtain any form of relief permitted under this Agreement, and applicable law, including, without limitation, the right to seek and obtain a decree of specific performance from a court of competent jurisdiction. Any right or remedy provided by a specific provision of this Agreement shall be deemed cumulative to, and not conditioned on, any other remedies upon Event of Default. The prevailing party in any action or proceeding brought to enforce the terms of this Agreement shall be entitled to an award of reasonable costs and attorney fees in addition to the relief obtained.

ARTICLE 8.

MISCELLANEOUS

Section 8.1 **Term**. The term of this Agreement shall commence on the date first written above and shall expire upon the later to occur of (a) the close out of the MDEQ Brownfield Grant and Loan or (b) the disbursement of all of the proceeds of the MDEQ Brownfield Grant and Loan.

Section 8.2 **Assignment**. Neither this Agreement nor any of the rights or obligations contained within it may be assigned or otherwise transferred by the Developer, nor shall the benefits of this Agreement inure to the benefit of any trustee in bankruptcy, receiver or creditor of the Developer, whether by operation of law or otherwise, without the prior written consent of the City which will not be unreasonably withheld, conditioned, or delayed. Any attempt by the Developer to assign or transfer this Agreement or any of its rights without such written consent shall be null and void and of no force or effect, and a breach of this Agreement.

Section 8.3 **Independent Contractor**. The Developer and Contractors shall each perform its services under this Agreement entirely as an independent contractor, and shall not be deemed an agent, employee or legal representative of the City. The City, Developer, and Contractors shall each have and maintain complete control over all its respective employees, agents and operators. Facts or knowledge of which the Developer or Contractor becomes aware shall not be imputed to City without communication to and receipt by managerial officials or employees of City. The Developer or Contractor has no authority to assume or create, and will not assume or create, any commitment or obligation on behalf of the City in any respect whatsoever. Further, the Developer or Contractor shall exercise its independent judgment for the services provided in this Agreement.

Section 8.4 **Notices**. All notices, certificates or communications required or permitted by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to City:

Marcus Peccia, City Manager
City of Cadillac

200 North Lake Street
Cadillac, Michigan 49601

If to the Developer:

Consumers Energy Company

or to such other address as such party may specify by appropriate notice.

Section 8.5 **Amendment and Waiver**. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

Section 8.6 **Entire Agreement**. This Agreement contains the entire agreement between the parties relating to the implementation of the MDEQ Brownfield Grant and Loan Implementation Agreement described herein. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement, relating to the MDEQ Brownfield Grant and Loan Implementation Agreement described herein.

Section 8.7 **Execution in Counterparts**. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 8.8 **Captions**. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

Section 8.9 **Applicable Law**. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

Section 8.10 **Mutual Cooperation**. Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction regarding the purposes of this Agreement. Each party to this Agreement shall execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or agreements as may be required by the Developer's lenders with respect to the Development to secure the Developer's financing from such lenders.

Section 8.11 **Binding Effect**. This Agreement shall be binding upon the parties hereto, and in the event of assignment under Section 8.3 upon their respective successors, transferees, and assigns. Developer shall provide written notice prior to transfer or assignment of Developer's interest to any subsequent purchaser and assign of the existence of this Agreement.

Section 8.12 **No Waiver**. No waiver by either party of any default by the other party in the performance of any portion of this Agreement shall operate or be construed as a waiver of any future default, whether like or different in character.

Section 8.13 **Survival of Covenants**. Except for the financial obligations, the covenants and provisions shall survive the term of this Agreement.

Section 8.14 **No Third-Party Beneficiaries**. This Agreement shall not be deemed or construed to create any rights to reimbursement or otherwise to the Contractors or any third parties. This Agreement shall not be construed to create any third-party beneficiary contract or claim, and the parties intend there to be no third party beneficiaries.

Section 8.15 **Disputes**. The parties acknowledge and agree that any disputes arising under this Agreement shall be resolved by a court of competent jurisdiction sitting in Wexford County, Michigan.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be duly executed and delivered as of the date first written above.

CONSUMERS ENERGY COMPANY

____

By:
Its:

CITY OF CADILLAC

____
By: Carla Filkins
Its: Mayor

Approved as to Substance:

____
By: Marcus Peccia
Its: City Manager

Approved as to form:

____
By: Michael Homier
Its: Attorney

Exhibit A
"Grant and Loan Contracts"

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755

Mayor
Carla J. Filkins

Mayor Pro-Tem
Shari Spoelman

Councilmembers
Robert J. Engels
Antionette Schippers
Stephen King

RESOLUTION NO. _________

RESOLUTION SETTING PUBLIC HEARING FOR COMBINED BROWNFIELD PLAN FOR MITCHELL BENTLEY REDEVELOPMENT

At a regular meeting of the Cadillac City Council held at Cadillac City Hall, 200 North Lake Street, Cadillac, Michigan on January 22, 2019, at 6:00 p.m., the following resolution was offered by

Councilperson ______________________________ and supported by

Councilperson ______________________________.

WHEREAS, the Michigan Brownfield Redevelopment Financing Act, Act 381, P.A. 1996 as amended ("Act 381"), authorizes municipalities to create a brownfield redevelopment authority to promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, or historically designated property through tax increment financing of eligible activities approved in a Brownfield Plan; and

WHEREAS, the City Council established the Cadillac Brownfield Redevelopment Authority ("CBRA") under the procedures in Act 381 on December 6, 1996, to facilitate the redevelopment of brownfield properties within the City of Cadillac; and

WHEREAS, the City received the Mitchell Bentley property through tax foreclosure and, in conjunction with the Cadillac Industrial Fund, has been working to overcome the challenges presented by the contaminated rubble and building remnants left on the property, and has resulted in receiving a MDEQ Brownfield Assessment Grant for $40,000 to conduct environmental assessments, the waiver of an approximately $350,000 MDEQ environmental lien for previous environmental response activities, and securing a MDEQ Brownfield Grant for $650,000 and Loan for $350,000 to remove the contaminated rubble, clear the site, and address pre-existing environmental contamination to position the property for redevelopment;

WHEREAS, a Brownfield Plan will provide revenues to repay the MDEQ Brownfield Loan through the capture of increased incremental real and personal property taxes generated by additional private investment on the property;

WHEREAS, the Mitchell Bentley property and other additional properties in the area of the former Mitchell Bentley property ("Mitchell Bentley Redevelopment") that are fully described in the Brownfield Plan qualify as a Brownfield Eligible Property and that the City desires to undertake various remediation activities, including environmental due diligence and due care, contaminated debris removal, lead and asbestos abatement, and demolition, through the MDEQ Brownfield Grant and Loan to position the property for redevelopment; and

WHEREAS, a Brownfield Plan was submitted to the CBRA that: (1) establishes the former Mitchell Bentley property and associated properties as Eligible Property, (2) outlines Environmental and Non-

Environmental Eligible Activities, and (3) provides for the reimbursement of the Eligible Activity expenses from taxes generated by increased private investment on the Eligible Property; and

WHEREAS, on January 22, 2019, the CBRA reviewed, approved, and recommended approval of the Brownfield Plan to the City Council, finding the Brownfield Plan met the requirements of Act 381 and constitutes a public purpose of job creation, increased private investment and economic development, and increased property tax value; and

WHEREAS, Act 381 requires the governing body to hold a public hearing on the Brownfield Plan and provide notice of the public hearing and notice to taxing jurisdictions in compliance with the requirements of Act 381; and

WHEREAS, the City Council desires to hold a public hearing to receive comments on the adoption of the Brownfield Plan at its February 18, 2019 regular meeting.

NOW, THEREFORE, the City Council of the City of Cadillac, Wexford County, Michigan, resolves as follows:

1. Pursuant to Act 381, a public hearing for the Brownfield Plan for the Mitchell Bentley Redevelopment shall be held on February 18, 2019, at 6:00 p.m. in the City Council Chambers, 200 North Lake Street, Cadillac, Michigan.

2. The City Clerk is directed to provide notice of the public hearing to taxing jurisdictions that levy taxes subject to capture and to the Michigan Department of Environmental Quality and Michigan Strategic Fund not less than 10 days prior to the public hearing in accordance with Act 381.

3. Should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid.

4. Any prior resolution, or any part thereof, in conflict with any of the provisions of this Resolution is hereby repealed, but only to the extent necessary to give this Resolution full force and effect.

YEAS: ____________________________

NAYS: ____________________________

STATE OF MICHIGAN)
)
COUNTY OF WEXFORD)

I, Sandra Wasson, City Clerk of the City of Cadillac, hereby certify this to be a true and complete copy of Resolution No. ____, duly adopted at a regular meeting of the City Council held on the 22th day of January, 2019.

____

Sandra Wasson, Clerk
Cadillac Municipal Complex
200 Lake Street
Cadillac, Michigan 49601
Telephone No: (231) 775-0181

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755

RESOLUTION NO. _______

RESOLUTION TO INTRODUCE ORDINANCE AMENDING THE CITY ZONING MAP AND TO SET A PUBLIC HEARING

At a meeting of the City Council of the City of Cadillac, Wexford County, Michigan, held in the Council Chambers, Cadillac Municipal Complex, 200 North Lake Street, Cadillac, Michigan, on the 22nd day of January, 2019, at 6:00 p.m.

PRESENT: ____

ABSENT: ____

The following preamble and resolution was offered by ________________________and seconded by ___________________________ .

WHEREAS, Munson Healthcare Cadillac Hospital (the "Owner") owns real property in the City of Cadillac legally described as follows:

LOTS 1 THRU 8, BLK 20, G.A. MITCHELLS PLAT OF THE NW 1-4 SEC 3-21-9, CITY OF CADILLAC & THAT PART OF VACATED HOBART ST REC IN L 81 PG 967;

and whose tax identification number is 10-082-00-181-00 (hereinafter the "Parcel"); and

WHEREAS, the Parcel is currently zoned OS-1, Office Service District; and

WHEREAS, Dean DeKryger, the DK Design Group (the “Applicant”), submitted an application (the "Application") to the City Planning Commission requesting that the Parcel be rezoned to OS-2, Office Service District; and

WHEREAS, upon giving notice in accordance with the Michigan Zoning Enabling Act, Act 110 of 2006, MCL 125.3101 *et seq.* ("MZEA"), the City Planning Commission conducted a public hearing regarding rezoning of the Parcel on December 18, 2018; and

WHEREAS, the City Planning Commission has recommended that the City Council amend the City Zoning Map to rezone the Parcel to OS-2, Office Service District; and

WHEREAS, the City Council wishes to conduct a public hearing to hear public comments regarding the Application.

NOW, THEREFORE, the City Council of the City of Cadillac, Wexford County, Michigan, resolves as follows:

1. Pursuant to Section 5.2 of the Charter, the City introduces the Ordinance Amending City Zoning Map (the "Ordinance," attached as Exhibit A).

2. A public hearing regarding the Application shall be held on February 4, 2019 at 6:00 p.m. in the Council Chambers, Cadillac Municipal Complex, 200 Lake Street, Cadillac, Michigan.

3. The City Clerk is directed to publish a summary of the Ordinance once in a newspaper of general circulation in the City, together with a notice setting the time and place for a public hearing on the Ordinance, within seven (7) days. The summary and notice of the hearing shall be substantially the form of Exhibit B.

4. A copy of the Ordinance shall be available for examination at the office of the City Clerk, and copies may be provided for a reasonable charge.

5. Any and all resolutions that are in conflict with this Resolution are hereby repealed to the extent necessary to give this Resolution full force and effect.

YEAS: ______________________________

NAYS: ______________________________

STATE OF MICHIGAN)
)
COUNTY OF WEXFORD)

I, Sandra Wasson, City Clerk of the City of Cadillac, hereby certify this to be a true and complete copy of Resolution No. ____, duly adopted at a meeting of the City Council held on the 22nd day of January, 2019.

____
Sandra Wasson
Cadillac City Clerk

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755

Mayor
Carla Filkins

Mayor Pro-Tem
Shari Spoelman

Councilmembers
Tiyi Schippers
Stephen King
Robert J. Engels

ORDINANCE NO. ____________

AN ORDINANCE AMENDING THE CITY ZONING MAP

THE CITY OF CADILLAC ORDAINS:

Section 1.

The City hereby amends the City Zoning Map to change the OS-1, Office Service District zoning designation and established use district as shown on the City Zoning Map for the real property legally described as:

> LOTS 1 THRU 8, BLK 20, G.A. MITCHELLS PLAT OF THE NW 1-4 SEC 3-21-9, CITY OF CADILLAC & THAT PART OF VACATED HOBART ST REC IN L 81 PG 967 (Tax identification No. 10-082-00-181-00)(the "Parcel"),

to the OS-2, Office Service District zoning designation and corresponding use district under Chapter 46 of the Cadillac City Code.

Section 2.

Should any portion of this Ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this Ordinance.

Section 3.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.

Section 4.

This Ordinance shall take effect twenty (20) days after its adoption.

Approved this ___day of ______________, 2019.

______________________________ ______________________________
Sandra Wasson, Clerk Carla J. Filkins, Mayor

26499:00004:4028903-3

26499:00004:4028903-3

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755

Mayor
Carla Filkins

Mayor Pro-Tem
Shari Spoelman

Councilmembers
Tiyi Schippers
Stephen King
Robert J. Engels

NOTICE OF PUBLIC HEARING AND SUMMARY OF PROPOSED ORDINANCE

On January 22, 2019, the City Council of the City of Cadillac introduced Ordinance No. _______, An Ordinance Amending the City Zoning Map.

NOTICE IS HEREBY GIVEN that a Public Hearing on the proposed ordinance will be held in the Council Chambers, Cadillac Municipal Complex, 200 Lake Street, Cadillac, Michigan, on February 4, 2019 at 6:00 p.m., at a Meeting of the City Council.

The City of Cadillac complies with the "Americans with Disabilities Act." If auxiliary aids or services are required at a public meeting for individuals with disabilities, please contact Sandra Wasson, City Clerk, at least three (3) business days prior to any such meeting. Copies of the proposed ordinance are available for examination at the office of the City Clerk and copies may be provided at a reasonable charge. The following is a summary of the proposed ordinance.

ORDINANCE NO. __________

AN ORDINANCE AMENDING THE CITY ZONING MAP

Section 1 of the proposed ordinance provides that the City amends the City Zoning Map to change the R-3, Single Family District designation and use district as shown on the City Zoning Map for the real property legally described as:

> LOTS 1 THRU 8, BLK 20, G.A. MITCHELLS PLAT OF THE NW 1-4 SEC 3-21-9, CITY OF CADILLAC & THAT PART OF VACATED HOBART ST REC IN L 81 PG 967 (Tax identification No. 10-082-00-181-00)(the "Parcel"),

to the OS-2, Office Service District zoning designation and corresponding use district under Chapter 46 of the Cadillac City Code.

Section 2 of the proposed ordinance provides that if any portion of the proposed ordinance is found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of the proposed ordinance.

Section 3 of the proposed ordinance provides that all other ordinances inconsistent with the provisions of the proposed ordinance are repealed but only to the extent necessary to give the proposed ordinance full force and effect.

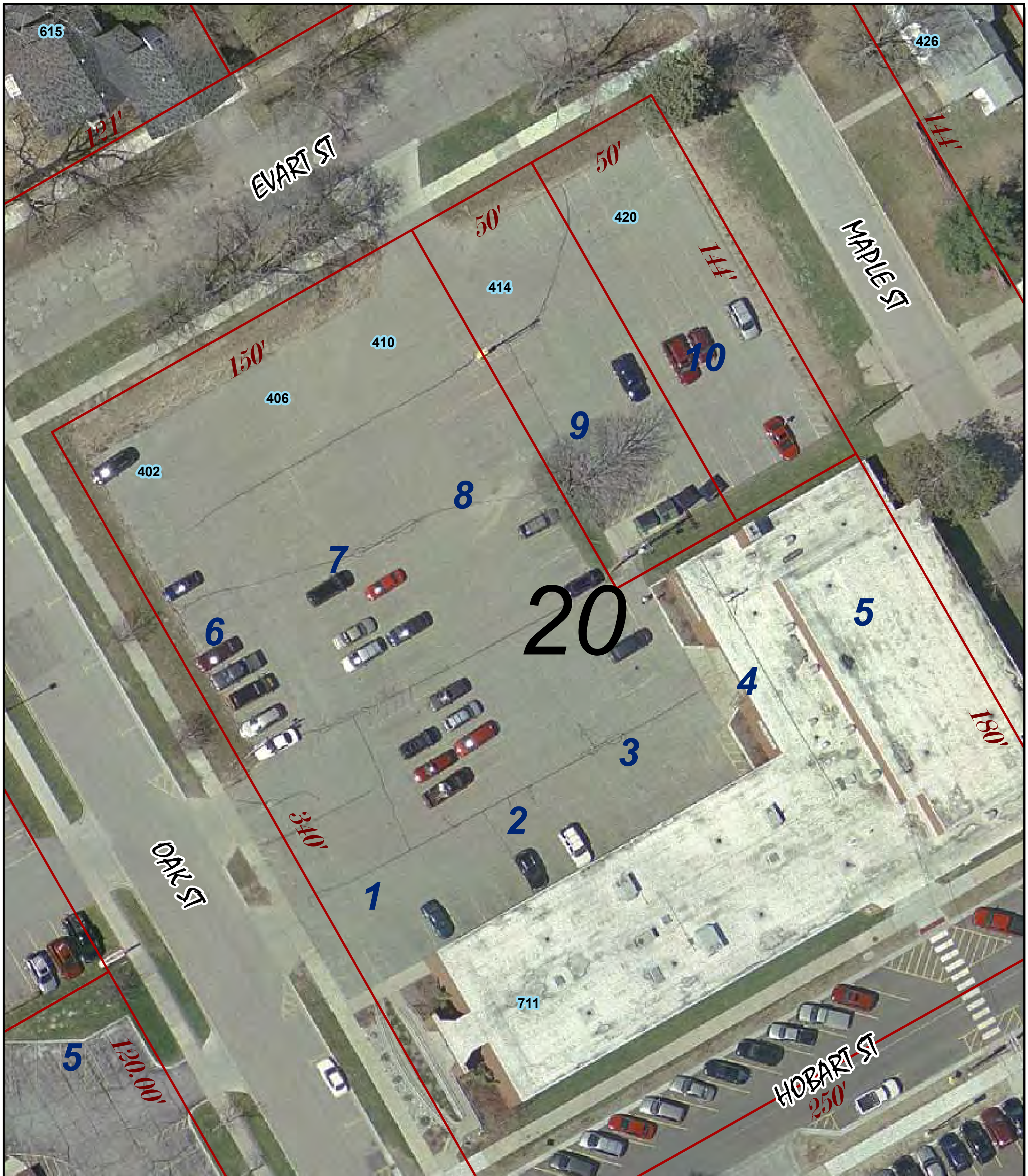
Section 4 of the proposed ordinance provides that it shall take effect twenty (20) days after its adoption.

CITY COUNCIL OF THE
CITY OF CADILLAC, MICHIGAN

By: Sandra Wasson, City Clerk
Cadillac Municipal Complex
200 Lake Street
Cadillac, Michigan 49601
Telephone No: (231) 775-0181

26499:00004:4028900-1

Munson McAuley Center, zoned OS-1 Office Service



Prepared By
Community Development
City of Cadillac
Cadillac, MI 49601
231-775-0181

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0 5 10 20 30 40
Feet

Date of Aerials
April 2010

CITY OF CADILLAC MICHIGAN

Note:
This is not a LAND or BOUNDARY LINE SURVEY and may not be used for the construction of any improvements.

MEETING MINUTES
CADILLAC PLANNING COMMISSION
November 26, 2018 6:00 P.M.

CALL TO ORDER

Chairman Putvin called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL

MEMBERS PRESENT:	Filkins, Smith, Peterson, Bunce, Putvin
STAFF PRESENT:	Wallace

APPROVAL OF AGENDA

Motion by Filkins, supported by Bunce to approve the November 26, 2018 meeting agenda. Motion unanimously was approved.

APPROVAL OF PLANNING COMMISSION MINUTES FROM OCTOBER 22, 2018

Motion by Smith, supported by Bunce to approve the October 22, 2018 meeting minutes. Motion unanimously was approved.

PUBLIC HEARING

Putvin introduced the public hearing on proposed zoning ordinance amendments regarding homeless shelters and turned the meeting over to John Wallace.

Wallace stated that the homeless shelter group that we worked with last year to develop a system to approve different shelters decided that it was a much better approach from an operational as well as financial standpoint to provide a consolidated group/family shelter. The proposed amendments would allow the consolidation of the various facilities into one location. The Planning Commission was given the existing wording and the proposed word changes prepared by the City Attorney, which highlighted the exact changes that would be needed.

For the benefit of the public, Wallace went through the more basic proposed changes including the definition of a group/family shelter, the restriction of districts, and required 1000 foot separation between such facilities.

Wallace stated that with any Special Use Permit application for such a facility there would have to be a demonstration that the facility was intended to address the homeless need of the greater Cadillac area.

Putvin opened the public hearing and asked if anyone wished to speak in favor of the proposed amendment changes. Several people spoke in favor. There was no one who spoke in opposition.

Putvin closed the public hearing.

Motion by Smith, supported by Filkins to approve the zoning ordinance amendments as presented with recommendation for approval by the City Council. Motion passed unanimously.

NEW BUSINESS – None.

OLD BUSINESS – None.

BOARD MEMBER COMMENTS – Comment made regarding Jeremy Eakins who received a Special Land Use for a business at 500 N. Mitchell Street. The business is doing well and the property is being well maintained.

Status of demolition for Cadillac Lofts mentioned. Developer and City needs to sign the development agreement.

Putvin asked about leaf pickup. He called the Utilities Department and was told that leaf pickup ceases after first snowfall. He expressed concern about bags of leaves that he has seen in town and asked if the Street Department would now pick them up. Wallace will relay this request to Ken Payne. Another comment was made regarding the need for street signs on Chestnut Street for Selma and Colfax streets. This will be referred to Mr. Payne, as well.

COMMUNICATIONS – None.

PUBLIC COMMENTS – None.

OTHER BUSINESS - None.

ADJOURN – There being no additional business, Putvin adjourned the meeting at 6:33 p.m.

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WEXFORD COUNTY AIRPORT AUTHORITY

MINUTES
Meeting of Wednesday, October 11, 2017

1. Meeting was called to order at 6:00 p.m. by Hill.
   Present: Hill, Osborn, King, Dehnbostel, and Holder
   Absent: Payne and Buisch
   Also present: Manager Bob Johnson

2. Introduction of Guests: Carol Burkert (Mercantile Bank), George Helton, and Catherine Gouge (recording minutes)

3. Additions or Deletions to the Agenda: None

4. Approval of September 2017 Meeting Minutes:
   MOTION by Dehnbostel to accept the September 2017 Meeting Minutes. Supported by King.
   All in favor. Motion carried.

5. Treasurer's Report
   Dehnbostel gave the Treasurer's Report. She reported the cash, fuel and net income actual figures.
   MOTION by King to accept the Treasurer's Report as stated. Supported by Holder.
   All in favor. Motion carried.

   Presentation: Carol Burkert gave a presentation on the Mercantile Bank of Michigan and what they have to offer. The information included staff, hours, qualifying for Municipal Checking Account, interest, payroll services, and the ability to have a credit card without an individual's name on it.

   The board discussed the information presented.
   MOTION by Osborn to change banks to Mercantile Bank. Supported by Dehnbostel.
   Four in favor, one opposed. Motion carried.

6. Committee Reports
   a. Finance Committee: Dehnbostel reported that they met to discuss the 2018 Budget.

   The board reviewed and discussed the 2018 Budget and changes to be made between line items:
   6505.1 Ground Maint - change January amount to $200 and change June

amount to $5000.
6405.1 Accounting - change the amounts for all months to $150.
6515.1 Terminal Operating Supp - change the amounts for all months to $400.
6400.1 Professional Fees - change the amounts for all months to $0.

<u>MOTION</u> by King to accept the 2018 Budget with changes as discussed. Supported by Holder.
All in favor. <u>Motion carried</u>.

b. Personnel Committee: Osborn reported that they met to discuss the vacation pay. To be discussed under item 10.e.

c. Facilities Committee: Hill reported that did not meet. They now have board members assigned to the committee so they will meet to familiarize themselves with the airport and go over the plan. The MAP meeting is scheduled for the end of November.

d. By-Law Committee: Osborn reported that they did not meet. They need members assigned to the committee. Holder and Payne were assigned to the committee. The committee will consist of Osborn, Holder, and Payne

7. President's Report

Hill reported that Haring Township passed a LED Sign Ordinance and an Ordinance on Light Pollution.

8. Manager's Report

Johnson reported that Clark, from Cadillac Accounting, has been hired to do the payroll and taxes. He will be showing Karen how the monthly work should be done and also clean up the QuickBooks issues, as needed. This will eliminate or greatly reduce the non-audit and pre-audit cost from BCB. A letter has been sent to Lenny Ward regarding his delinquent hangar rent. The board discussed the delinquency issue and agreed a second letter should be sent certified mail. The board discussed having two signatures on checks, this procedure will be maintained, and all agreed Hill can be one of the signatures on the checks.

9. New Business

a. Approval of 2018 Budget
Previously discussed under item 6.a.

b. Change to Mercantile Bank?
Previously discussed after the presentation.

c. Hired Cadillac Accounting Service
Previously presented under item 8.
<u>MOTION</u> by King to accept Clark (Cadillac Accounting Service) to do payroll checks, guide through QuickBooks, and whatever else we need him for. Supported by Dehnbostel.
All in favor. <u>Motion Carried</u>.

d. Status of taxes: payroll, sales, fuel, unemployment, etc.
Clark, from Cadillac Accounting, will be working on this.

e. Courtesy Car has had some repairs done
Johnson reported on the status of the repairs done and the remaining repairs needed.
<u>MOTION</u> by Osborn that Johnson can spend $563 or less to fix the exhaust leak. Supported by Dehnbostel.
All in favor. <u>Motion carried</u>.

f. Furnace needs new blower motor
Johnson has been looking into how much it would cost to have it repaired. He will call about the price for a new motor and might repair ourselves.

g. Airplane Tug
Hill gave background on the tug that is available. By paying an additional $1000 and forgiving the $692 back hangar rent owed to the airport, the tug can be purchased. The board discussed the matter.
<u>MOTION</u> by Osborn to pay $1000 and forgive the $692 back hangar rent to Jerry Jenema to purchase the tug. Supported by Holder.

The board further discussed the issue.
Osborn withdrew his motion.

<u>MOTION</u> by Dehnbostel to increase 2017 Budget line item 6500.1, Eq Maint & Spp, by $1700 in order to pay $1000 and forgive the $692 back hangar rent to Jerry Jenema to purchase the tug. Supported by King.
All in favor. <u>Motion carried</u>.

10. Old Business:

a. Trees on west end of runway have been removed
Hill reported that Johnson and Bob did it with the cooperation of the city. They will have to keep expanding that area in length and width. Hill reported that they passed the state inspection today.

b. Computers are working
Johnson reported that he had a computer technician come in and everything is working together now.

c. We have a quote for logo shirts for employees. Other people would like to order some.
The board discussed selling the items to the public, it was agreed they would not overstock the items and 'Staff' would be added to the staff's shirts. Johnson will order the staff shirts.

d. New safe is installed
Hill presented the new safe that has been installed.

e. Vacation Pay
Osborn presented the Vacation Time proposal that was discussed at the personnel committee meeting. After November 1, 2017, employees will start earning 1.5 minutes for every hour worked. After 3 years, the rate will increase to 2 minutes earned per hour. Salary employees will get two weeks (10 days) off per year.
MOTION by Dehnbostel to accept the changes to vacation time. Supported by Holder.
All in favor. Motion carried.

11. Public Comments
George Helton commented that since Johnson has been in charge things are more relaxed, operations are good, maintenance is phenomenal, and he is doing an excellent job. He further commented that this is a great little airport but there is not enough exposure to let the community know we have a great little airport. He has noticed that we don't have a large roll around fire extinguisher - that would be a nice thing to have.

12. Members Comments
King commented that he is coming up on 22 months on the board and received his letter from Elaine Richardson about continuing, he would like to continue - he is enjoying it.

Dehnbostel commented that she also received her letter from Elaine and has about the same amount of time on the board.

Holder commented that he is glad to be here and meet everybody.

Hill reminded everyone to use the committees for everything.

13. Next Meeting date is November 8, 2017, at 6:00 p.m.

14. Adjournment

MOTION by Dehnbostel to adjourn at 7:53 pm. Supported by King. All in favor. Motion carried.

Prepared by Catherine Gouge