

CITY OF MASON

201 West Ash St.
Mason, MI 48854-0370

City Hall 517-676-9155
Fax 517-676-1330

**City Council Workshop
Discuss Evaluation Tool for
City Administrator
6:30 p.m., Second Floor Training Room**

CITY COUNCIL MEETING - COUNCIL CHAMBER Tuesday, September 6, 2016 7:30 p.m.

1. Call to Order
2. Roll Call
3. Pledge of Allegiance and Invocation
4. Announcements
5. People from the Floor
6. Presentation
 - A. Proclamation Acknowledging Sergeant Reckling
 - B. Dennis McKee, Communications Director for Consumers Energy, Discussing Meter Reading Enhancements
7. Consent Agenda
 - A. Approval of Minutes
 - Regular Council Meeting: August 15, 2016
 - B. Approval of Bills in the Amount of \$ 595,855.32
 - C. Motion – Request to Occupy the Sidewalk – Cub Scout Pack 770 – Fundraiser (9.16.2016)
 - D. Motion – Streets Closure Request – Compete for a Cause 5K Fun Run Race (9.17.2016)
 - E. Motion – Streets Closure Request – Benedict Auto Body – Customer Appreciation Day (9.17.2016)
 - F. Motion – Streets Closure Request – Mason High School Homecoming Parade (10.7.2016)
 - G. Resolution – Authorizing Changes to the MERS Benefits for AFSCME Members Per the Approved Contract
 - H. Resolution – Authorizing Mayor Waltz and City Administrator Stuart to Sign MDOT Contract for the Jefferson Street Trailhead Project
8. Regular Business
9. Unfinished Business
10. New Business
 - A. Discussion – Canceling City Council Meetings (Document provided separately)
 - B. Motion – Authorizing the Rejection of the Proposal from Capital Regional Airport Authority (CRAA) to Manage Jewett Field
 - C. Resolution – Action Related to J & J Properties of Mason, LLC v Mason Public Schools
11. Correspondence – City Attorney's Report
12. Liaison Reports
13. Councilmember Reports
 - A. Discussion – ORV Ordinance – Bruno (Document provided separately)
14. Administrator's Report (To be provided at meeting)
15. Adjournment

**CITY OF MASON
REGULAR CITY COUNCIL MEETING
MINUTES OF AUGUST 15, 2016**

Mayor Waltz called the meeting to order at 7:30 p.m. in the Council Chambers at 201 W. Ash Street, Mason, Michigan. Councilmember Clark asked for a moment of silence in memory of Mason Fire Fighter Tim Scott. He followed with a brief tribute of Tim's life and commitment to his community. He also gave a brief tribute in memory of Dick Ghinelli, who was dedicated in serving his community. Councilmember Clark led the Pledge of Allegiance and offered the invocation.

Present: Councilmembers: Brown, Bruno, Clark, Droscha, Ferris, Mulvany, Waltz
Absent: Councilmember: None
Also present: Deborah S. Stuart, City Administrator
Deborah J. Cwierniewicz, City Clerk
Michelle Pietsch, Asst. Finance Director/Treasurer

ANNOUNCEMENTS

None.

PEOPLE FROM THE FLOOR

None.

CONSENT AGENDA

It was the consensus of Council to remove Consent Agenda Item (D) Motion – Approval of Amended 2016-2017 Fiscal Year Budget and Item (F) Motion – Street Closure Request: Riverwalk Meadows Homeowners Annual Picnic to Regular Business.

MOTION by Brown, second by Droscha,
to approve the Consent Agenda as follows:

- A. Motion – Approval of Minutes: Regular Council Meeting: July 18, 2016
- B. Approval of Bills in the Amount of \$ 505,717.17
- C. Motion – Approval of Amended Directory of Charges
 - approve the following changes to the Directory of Charges:
 1. Remove FOIA Requests/Copy Rate
 2. Remove \$400.00 5th alarm within 120 days
- D. Resolution – Approval of the Mason Fire Department to Participate in the Ingham County Mutual Aid Box Alarm System (MABAS)

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2016-29
APPROVAL OF THE MASON FIRE DEPARTMENT TO PARTICIPATE
IN THE INGHAM COUNTY MUTUAL AID BOX ALARM SYSTEM (MABAS)
August 15, 2016**

WHEREAS, the City of Mason has the power, privilege and authority to maintain and operate a fire department providing fire protection, fire suppression, technical rescue, hazardous incident response, and other emergency response services ("Fire Services");

WHEREAS, Fire Services can further be improved by cooperation between political subdivisions during times of public emergency, conflagration or disaster ("Incidents");

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28, and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501 et seq. (the "Act"), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common and which each might exercise separately;

WHEREAS, the City of Mason desires to enter into an interlocal agreement, pursuant to the Act, to further improve Fire Services;

WHEREAS, the City of Mason desires to commit personnel and equipment to another Party if deemed reasonable upon the request of another Party;

WHEREAS, the Mutual Aid Box Alarm System (MABAS), is a mechanism that may be used for deploying personnel and equipment in a multi-jurisdictional or multi-agency emergency mutual aid response;

WHEREAS, as a result of entering into an interlocal agreement to further improve Fire Services, the Parties are creating the Ingham County MABAS Division; and

WHEREAS, the City of Mason has the authority to execute this Agreement pursuant to resolution of its governing body.

NOW, THEREFORE BE IT RESOLVED, that the City of Mason finds it is in the best interest of its citizens from a safety and fiscal standpoint to enter into the Interlocal Agreement creating the Ingham County MABAS Division and agrees to continue to appoint one member to the MABAS Executive Board.

MOTION APPROVED

REGULAR BUSINESS

Motion – Approval of Amended 2016-2017 Fiscal Year Budget

It was discussed that the Code Enforcement Officer will continue with the service of salvage vehicle inspections.

MOTION by Brown, second by Droscha,
to amend the 2016-2017 Fiscal Year Budget as presented.

MOTION APPROVED

Motion – Street Closure Request: Riverwalk Meadows Homeowners Annual Picnic

Discussion was held regarding the fees for having barricades put in place for street closures. It was the consensus of Council that neighborhood block events may choose to pay the fee or may pick them up and return the barricades at no fee.

MOTION by Bruno, second by Clark,
To approve the Riverwalk Meadows Homeowners Association's request for a cul-de-sac street closure at 408, 409, and 412 Raging River, Sunday, September 21, 2016, between 4:30 p.m. and 8:00 p.m. to allow the neighborhood to hold its annual picnic; the fee for placing and removing barricades will not be charged if the Association picks them up and returns them to the City.

MOTION APPROVED

It was the consensus of Council to move Agenda Item 8 (B) Resolution – Approval of Award of High Service Pump Numbers 2 and 3 Rehabilitation to Kennedy Industries Inc. from unfinished business to regular business, Agenda Item No. 7(C).

Resolution – Approval of Award of High Service Pump Numbers 2 and 3 Rehabilitation to Kennedy Industries Inc.

MOTION by Bruno, second by Droscha,
to consider Resolution – Approval of Award of High Service Pump Nos. 2
and 3 Rehabilitation to Kennedy Industries Inc. read.

MOTION APPROVED

Introduced by Droscha and seconded by Ferris, Resolution – Approval of Award of High Service Pump Numbers 2 and 3 Rehabilitation to Kennedy Industries Inc.

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2016-30
APPROVAL OF AWARD OF HIGH SERVICE PUMP
NOS. 2 AND 3 TO KENNEDY INDUSTRIES INC
August 15, 2016**

WHEREAS, it is in the best interests of the City of Mason to maintain our water plant; and

WHEREAS, high service pump numbers 2 and 3 are in need of rehabilitation.

NOW THEREFORE BE IT RESOLVED, that the Mason City Council does hereby approve the award of high service pump numbers 2 and 3 rehabilitation to Kennedy Industries Inc in the amount of \$25,950.00 and authorizes the City Administrator to execute any other related documents.

RESOLUTION APPROVED

UNFINISHED BUSINESS

Resolution – Approval to Waive the Formal Bid Process and Approve the Purchase of a New Supervisory Control and Data Acquisition (SCADA) Computer and Backup Computer from Automation Engineering Ltd.

Stuart stated that this item was deferred to allow staff to explore alternative companies and costs and whether the operating system was appropriate. Estimates were garnered and the low estimate was in the amount of \$175,000, compared to \$22,800 bid amount recommended by staff. Any change in the company would require replacing the software and hardware due to the integrated system.

Waltz reminded Council that this resolution was considered read at the July 18 regular meeting.

Introduced by Droscha and seconded by Ferris, Resolution - Approval to Waive the Formal Bid Process and Approve the Purchase of a New Supervisory Control and Data Acquisition SCADA Computer and Backup Computer from Automation Engineering Ltd.

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2016-31
APPROVAL TO WAIVE THE FORMAL BID PROCESS AND APPROVE THE PURCHASE OF A
NEW SCADA COMPUTER AND BACKUP COMPUTER FROM AUTOMATION ENGINEERING LTD
August 15, 2016**

WHEREAS, the City of Mason budgeted the Supervisory Control and Data Acquisition (SCADA) computer and software replacement in the 2016/2017 budget;

WHEREAS, this is a single source provider for the SCADA project; and

WHEREAS, the quote received from Automation Engineering of \$22,824.13 is within the budget of \$35,000.00.

BE IT HEREBY RESOLVED that the Mason City Council approves to waive the formal bid process and approve the purchase of a new SCADA computer and backup computer from Automation Engineering Ltd for \$22,824.13 and authorizes signature authority to the City Administrator.

Yes (6) Brown, Clark, Droscha, Ferris, Mulvany, Waltz

No (1) Bruno

RESOLUTION APPROVED

Discussion was held regarding the schedule to proceed with the evaluation of the City Administrator. It was the consensus of Council to hold a work session with Mr. Pat Price prior to the September 6, 2016, regular meeting. A closed session will be placed on the September 6, 2016 agenda regarding the City Administrator's evaluation prior to the next regular meeting. The session will be informal with written comments from each Council Member, without scoring. Administrator Stuart requested that the evaluation be held in closed session.

Discussion – Formal Opinion on Canceling City Council Meetings (Mayor Waltz)

Waltz stated that there had been a motion at the last meeting to seek a legal opinion from the City Attorney to whether the current procedure of cancelling a Council meeting was in compliance with the City Charter. He cited the verbal opinion given by City Attorney McGinty from the November 17, 2014, Minutes, "The approved schedule would need to be amended to set a second meeting date. The Council may determine to cancel any meeting for a legitimate reason." Waltz stated that this opinion would apply and prevent further attorney fees, as Council has determined. After much discussion it was the consensus of Council that the motion stand and a current legal opinion be requested.

NEW BUSINESS

Motion – Designation of Voting Delegate and Alternate to the 2016 Michigan Municipal League (MML) Annual Meeting

The Annual Michigan Municipal League (MML) Convention will be held on Mackinaw Island, September 14 - 16, 2016. The Annual Business Meeting is scheduled to be held Wednesday, September 14, 2016, at 1:30 p.m. In accordance with the League Bylaws, Council is requested to designate, by formal action, one official who will attend the Convention as your official voting representative and one alternate. The official representative has voting privilege in the election of trustees, on policy, and other business.

Mulvany stated that the convention should be boycotted due to the location and hotel cost at this critical financial time for Michigan cities. It was discussed whether to appoint an alternate delegate at another time if necessary.

MOTION by Droscha, second by Brown,

to appoint Mayor Michael Waltz to serve as the City of Mason principal official representative at the 2016 MML Annual Business Meeting held in conjunction with the 2016 MML Convention.

Yes (5) Brown, Droscha, Ferris, Mulvany, Waltz

No (2) Bruno, Clark

MOTION APPROVED

CORRESPONDENCE

All correspondence was distributed.

LIAISON REPORTS

- Droscha informed Council regarding Traffic Commission business.
- Brown informed Council regarding Planning Commission business.

COUNCILMEMBER REPORTS

None.

ADMINISTRATOR'S REPORT

Stuart informed Council regarding current City business, highlighting the following matters: Well Nos. 9 and 10 are operational, street construction has begun on Oak and Park streets, a recommendation will be presented at the next meeting regarding the proposal of Capital Area Airport for the City requesting the City assume management of the Jewitt Airport. She thanked those who assisted the City of Mason in the past week in its time of need with the loss of Fire Fighter Tim Scott; Fire Department Fire Chief Brian Ball of Delhi Township, recently retired Fire Chief Mike Hammel and Chaplin Bradshaw of the City of Lansing, reverend Donna Minarik of Mason First United Methodist Church, and Dansville Fire Department.

Brown commended Administrator Stuart for her leadership and the resource she was to staff, as well as for the community during this time.

MOTION by Clark, second by Bruno,
to amend the agenda by inserting another People from the Floor as Agenda
Item No. 14.

MOTION APPROVED

PEOPLE FROM THE FLOOR

Mark Howe, Assistant Fire Chief, thanked Council for allowing him to speak at this time. He wanted to inform Council of the outstanding job that was performed by the City of Mason staff following the loss of Fire Fighter Tim Scott. He stated that the Police Department was professional and kind. Both Sgt. Hanson and Sgt. Reckling were awesome and took care of the family and those who were touched by the tragic event. He acknowledged Mason staff Ken Baker, DPW Director, Deborah Cwierniewicz, City Clerk, and Council Members. He stated that City Administrator Deborah Stuart was an excellent leader, as well as compassionate and supportive.

Clark stated that he felt it necessary to inform Council of Mr. Mark Howe's superior fortitude. He stated that whether the tragedy was in Mason with one of his own, or in a neighboring community, responsibility lands on the shoulders of Mark Howe, who consistently manages the situation through. He gave great honor to Mr. Howe for carrying a demanding load with determined fortitude.

CLOSED SESSION - AFSCME CONTRACT NEGOTIATIONS

MOTION by Brown,
to adjourn to closed session to consider AFSCME Contract Negotiations.
Yes (7) Brown, Bruno, Clark, Droscha, Ferris, Mulvany, Waltz
No (0)
MOTION APPROVED

Council adjourned to executive session at 8:56 p.m. and reconvened at 9:23 p.m.

MOTION by Clark, second by Bruno,
to consider Resolution – Approval of Award of High Service Pump Numbers
2 and 3 Rehabilitation to Kennedy Industries Inc. read.
Yes (7) Brown, Bruno, Clark, Droscha, Ferris, Mulvany, Waltz
No (0)
MOTION APPROVED

Resolution – AFSCME Agreement was introduced by Droscha and seconded by Ferris.

**CITY OF MASON
CITY COUNCIL RESOLUTION NO. 2016-31
AFSCME AGREEMENT
August 15, 2016**

BE IT HEREBY RESOLVED by the Mason City Council that it does hereby ratify an Agreement between the City of Mason and Mason City Employees, Chapter of Local #1390, Council 25, American Federation of State, County and Municipal Employees, dated September 2, 2016 – June 30, 2019; and

BE IT FURTHER RESOLVED, the Mayor and City Administrator are hereby authorized to execute said Agreement on behalf of the City Council.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:25 p.m.

Deborah J. Cwierniewicz, City Clerk

Michael F. Waltz, Mayor

09/01/2016 03:16 PM
 User: TF
 DB: Mason City

INVOICE APPROVAL BY INVOICE REPORT FOR CITY OF MASON
 EXP CHECK RUN DATES 08/19/2016 - 09/07/2016
 BOTH JOURNALIZED AND UNJOURNALIZED
 BOTH OPEN AND PAID
 COUNCIL REPORT

TUESDAY, SEPTEMBER 6, 2016

Vendor Code Invoice GL Number	Vendor Name Invoice Description GL Description	Amount
07800	BLUE CROSS BLUE SHIELD OF MICHIGAN	
GRP#7029499710DIV#00 750-000.00-231.015	CITY EXPENSE SEPT HEALTH INS CITY EXPENSE SEPT HEALTH INS	18,237.51
GRP#7029499DIV#001 101-855.00-874.001	SEPT RETIREES CITY EXPENSE SEPT RETIREES CITY EXPENSE	6,327.66
		VENDOR TOTAL: 24,565.17
06474	CONSUMERS ENERGY	
SEPT 2016 101-265.00-920.000 592-555.00-920.000 592-559.00-920.000	GAS & ELECTRIC 7/21 - 8/22 GAS & ELECTRIC 7/21 - 8/18 ELECTRICITY 7/23 - 8/22 ELECTRICITY 7/21 - 8/19	6,426.45 8,010.07 8,958.58 23,395.10
		VENDOR TOTAL: 23,395.10
08104	ECOBLASTER	
1072 248-000.00-818.010	RESTORE DDA 39 LAMP POSTS RESTORE DDA 39 LAMP POSTS	27,105.00
		VENDOR TOTAL: 27,105.00
08139	GRAND RIVER CONSTRUCTION, INC	
PAY EST 4 592-555.00-970.000	2016 WASTEWATER PLANT IMPROVEMENTS 2016 WASTEWATER PLANT IMPROVEMENTS	406,065.00
		VENDOR TOTAL: 406,065.00
05016	GRANGER	
AUG 2016 101-528.00-818.000	AUGUST REFUSE CHARGES 2,321 CUSTOMERS AUGUST REFUSE CHARGES 2,321 CUSTOMERS	28,757.19
		VENDOR TOTAL: 28,757.19
06205	KEMIRA WATER SOLUTIONS	
9017512583 592-555.00-757.000	9.58 DRY TONS FERRIC CHLORIDE 9.58 DRY TONS FERRIC CHLORIDE	5,201.56
		VENDOR TOTAL: 5,201.56
07957	MASON SUN DRIED MUSIC FESTIVAL	
2016-001 248-000.00-880.000	SUNDRIED MUSIC FESTIVAL SPONSORSHIP SUNDRIED MUSIC FESTIVAL SPONSORSHIP	5,000.00
		VENDOR TOTAL: 5,000.00
05234	MML WORKERS COMPENSATION FUND	
5339204 101-850.00-724.000	2ND QUARTER 2016/2017 WORKERS COMP CONTRIBUTION 2ND QUARTER WORKERS COMP CONTRIBUTION	17,821.00
		VENDOR TOTAL: 17,821.00
06993	PREIN & NEWHOF	
35571 592-555.00-970.000	WWTP HEADWORKS UPGRADE WWTP HEADWORKS UPGRADE	13,921.00
		VENDOR TOTAL: 13,921.00
07943	SIGNATURE FORD, L - M	
BR899 661-901.00-970.000	2017 FORD EXPLORER 2017 FORD EXPLORER	25,584.00
		VENDOR TOTAL: 25,584.00

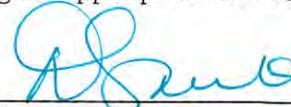
09/01/2016 03:16 PM
User: TF
DB: Mason City

INVOICE APPROVAL BY INVOICE REPORT FOR CITY OF MASON
EXP CHECK RUN DATES 08/19/2016 - 09/07/2016
BOTH JOURNALIZED AND UNJOURNALIZED
BOTH OPEN AND PAID
COUNCIL REPORT

TUESDAY, SEPTEMBER 6, 2016

Vendor Code Invoice GL Number	Vendor Name Invoice Description GL Description	Amount
05363	WOLVERINE ENGINEERS INC	
20160551 592-558.00-970.017	WELLS 9 & 10 ENGINEERING PROJ#12-0055 WELLS 9 & 10 ENGINEERING PROJ#12-0055	5,628.75
20160565 202-451.00-970.211 203-451.00-970.211 592-548.00-965.211 592-558.00-970.919	2016 MASON STREETS ENGINEERING PROJ#15-0080 MASON STREETS ENGINEERING PROJ#15-0080 MASON STREETS ENGINEERING PROJ#15-0080 MASON STREETS ENGINEERING PROJ#15-0080 MASON STREETS ENGINEERING PROJ#15-0080	4,044.48 2,977.65 1,060.41 4,729.01
		<hr/> 12,811.55
	VENDOR TOTAL:	<hr/> 18,440.30
	TOTAL - ALL VENDORS:	<hr/> 595,855.32

I hereby certify that I have reviewed the above bills and expenditures and to the best of my knowledge and belief, they cover expenditures of the City services and materials and are within current budget appropriations.



Deborah Stuart
City Administrator

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 7C

AGENDA ITEM

Motion – Request to Occupy the Sidewalk – Cub Scout Pack 770 - Fundraiser

EXHIBITS

Letter of Request – Darcy Swagart, Cub Scout Pack 770 leader, dated August 27, 2016

STAFF REVIEW

Deborah Cwiertniewicz, City Clerk (Lead)
Don Hanson, Police Sergeant
Kerry Minshall, Fire Chief
Ken Baker, Department of Public Works Director

SUMMARY STATEMENT

Cub Scout Leader Darcy Swagart, Pack 770, is requesting to set up a table and sell popcorn at the corner of Maple, Park, and State streets in front of Beaches Tanning as a means of fundraising.

Specific dates and time slots have been submitted and will be held if there is an adult volunteer committed to the time slot.

Staff review confirmed there are no concerns or objections to the request. There is no request for City services and no cost to the City for this event.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Move to approve the request of Cub Scout Pack 770 to occupy the sidewalk in front of Beaches Tanning for the purpose of fundraising by selling popcorn on the following dates:

- Friday, September 16, 2016 from 4:00 p.m. to 8:00 p.m.
- Friday, September 30, 2016 from 4:00 p.m. to 8:00 p.m.
- Friday, October 21, 2016 from 4:00 p.m. to 8:00 p.m.
- Saturday, October 22, 2016 from 10:00 a.m. to 4:00 p.m.
- Friday, November 4, 2016 from 4:00 p.m. to 8:00 p.m.
- Saturday, November 5, 2016 from 10:00 a.m. to 4:00 p.m.

August 27, 2016

Darcy Swagart
470 E. Dexter Trail
Mason, MI 48854
Ph# 517-388-2500
dswag1113@gmail.com

To the members of the Mason City Council,

My name is Darcy Swagart. I am a leader with Cub Scout Pack 770 out of Dansville. Each year the Boy Scouts of America, Boy Scout and Cub Scout troops and packs sell popcorn as a fundraiser. It is the only fundraiser our group does, and we depend on that funding alone to keep our program running and assist families with the costs associated for the Scouts.

John and Dawn Matyas, the parents of one of our Scouts, own Beaches Tanning at 174 West Maple St. We would like to set up a table on the sidewalk outside of their business so our Cub Scouts can sell popcorn to passersby. We will be submitting letters of approval from the businesses next door, stating they approve of us having a table on the sidewalk.

We would not occupy the entire sidewalk, only enough space to place a table approximately 36" x 48"-72". The Scouts would be supervised by an adult at all times during the sale. I am listing some possible dates for sales. These are tentative as I would need to seek parent volunteers for whatever day(s) you approve.

Friday September 16, 2016 4:00 p.m. – 8:00 p.m.
Friday September 30, 2016 4:00 p.m. – 8:00 p.m.
Friday October 21, 2016 4:00 p.m. – 8:00 p.m.
Saturday October 22, 2016 10:00 a.m. – 4:00 p.m.
Friday November 4, 2016 4:00 p.m. – 8:00 p.m.
Saturday November 5, 2016 10:00 a.m. – 4:00 p.m.

You may notify me with your answer using the contact information above. Thank you in advance for your time and consideration.

Respectfully submitted,



Darcy Swagart
Cub Scouts Pack 770

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 7D

AGENDA ITEM

Motion - Streets Closure Request – Compete for a Cause 5K Fun Run Race

EXHIBITS

Special Event Application – Brooke Dippel – Compete for a Cause 5K Fun Run Race

STAFF REVIEW

Deborah Cwierniewicz, City Clerk (Lead)
Don Hanson, Police Sergeant
Kerry Minshall, Fire Chief
Ken Baker, Department of Public Works Director

SUMMARY STATEMENT

The request of Brooke Dippel to hold a Compete for a Cause 5K Fun Run Race in Mason on September 17th is planned to be an annual event held in conjunction with the annual soccer event sponsored by the Mason and Okemos communities. The mission of Compete for a Cause is to bring public awareness to childhood cancer.

Staff review confirmed that there are no concerns or objections to the request. The estimate for police services is \$235. DPW estimated costs totaling \$337. However, the applicant may pick up and return the requested barricades which will eliminate charges for this service.

The applicant has been notified and is willing to pay for the services as described. There will be no cost to the City of Mason.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Move to approve the use closure of streets for the Compete for a Cause 5K Fun Run Race, September 17, 2016, between 9:00 a.m. and 11:00 a.m. as shown on the map.

**City of Mason
Special Events Application**

Complete and return this application to the City Clerk's Office at least 21 calendar days prior to the starting date of the event.
A new application must be submitted each year.

Event		
Event Name: compete for a cause 5k fun run race		
Event Purpose: addition to compete for a cause event		
Sponsoring Organization Information		
Legal Business Name: Compete for a Cause		
Address: 4008 Shoals Drive	City: Okemos	State/Zip: MI 48864
Mailing Address: 4008 Shoals Drive	City: Okemos	State/Zip: MI 48864
Telephone: 517-230-9983	Email Address: compete fora cause@gmail.com	
Contact Name: Brooke Dippel	Title: Race Coordinator	
Telephone: 517-881-4405	Email Address: brooke.dippel@gmail.com	
Contact Person on Day of Event		
Name: Brooke Dippel	Title: Race Coordinator	
Address: 237 Washington St.	City: Mason	State/Zip: MI 48854
Telephone:	Cell Phone: 517-881-4405	Email Address: brooke.dippel@gmail.com
Type of Event (Check one)		
<input type="checkbox"/> City Operated/Sponsored Event	<input type="checkbox"/> Political or Ballot Issue Event	<input type="checkbox"/> Run Event
<input type="checkbox"/> Co-sponsored Event	<input type="checkbox"/> Wedding	<input type="checkbox"/> Other (describe)
<input checked="" type="checkbox"/> Non-Profit Event	<input type="checkbox"/> Block Party	
<input type="checkbox"/> For Profit Event	<input type="checkbox"/> Video or Film Production	
Event Information		
Event Location(s): Mason High School will be start/finish. Map enclosed is the suggested route.		
Event Date(s): September 17th 2016, Saturday		
Event Hours: Race time 9:30. 6:30am set up and will wrap up by 11am		
Date/time for set up: 9-17-16 6:30 am		
Date/time for clean up: 9-17-16 11:00 am		
Describe set up and clean up procedures: Set up will include signs an cones/ barrels barrels along course Volunteers will help with set up/ tear down		

* There will be 3-4 athletic trainers on site and able to respond throughout the race.

Estimated DAILY attendance: 200 race participants 100 spectators
about + 300 total

Describe crowd control plans for this event:

Volunteers will be on site to help w/ crowd control.

Describe the Special Event's impact on adjacent commercial and residential property:

A Signature Form must be attached.

runners will be passing through downtown areas creating more foot traffic on the streets.

Will sidewalks be used? YES NO

If yes, include a detailed map outlining the Sidewalks must be accessible for pedestrian traffic.

Describe sidewalk use:

use will be for portions of the race. we believe this will be safer for race participants than some roads involved

Will street closures be necessary? YES NO

If yes, include a detailed map indicating road closures, emergency vehicle access, and barricade locations.

Describe street closures:

Barnes between Mason High School and Ash street.
There will also be crossing points on jefferson and South street. This is indicated on the map.

* Streets closed: Date/Time:

9-17-16 9:20 am

* Streets re-open: Date/Time:

9-17-16 10:30 am

Will parking lot closures be necessary? YES NO

If yes, include a detailed map indicating proposed closures and barricade locations

Describe parking lot closures:

* Parking lot(s) closed: Date/Time:

* Parking lot(s) re-open: Date/Time:

What parking arrangements are proposed to accommodate attendance?

parking will take place at Mason High School parking lot.

Will music be provided/included during the event? YES NO

Describe type of music proposed:

- Live
- Recorded
- Amplification
- Loudspeakers

Sound Amplification Equipment Registration Statement must be completed and attached with receipt of payment.

music will be only at the high school football field

Will the event require the use of any of the following municipal equipment:

Sponsoring organization should expect to be charged for use, placement, and maintenance of these items

Sponsoring Organization may be required to supply a dumpster

- Trash Receptacles* Quantity: _____
- Barricades Quantity: _____
- Traffic Cones Quantity: _____
- Other (describe): _____

Barricades have been donated.

Will the following be constructed or located in the event area?

No stakes of any kind allowed in asphalt.

- | <u>Item</u> | <u>Quantity</u> | <u>Item</u> | <u>Quantity</u> |
|--|-----------------|---|-----------------|
| <input type="checkbox"/> Booths: | _____ | <input checked="" type="checkbox"/> Tables: | ~5 |
| <input checked="" type="checkbox"/> Tents: | 1 | <input type="checkbox"/> Rides: | _____ |
| <input type="checkbox"/> Awnings: | _____ | <input type="checkbox"/> Portable Toilets: | _____ |
| <input type="checkbox"/> Canopies: | _____ | (may be required depending on event) | |
| <input type="checkbox"/> Rides: | _____ | <input type="checkbox"/> Other (describe): | _____ |

this will be at the highschool

You must attach a plan of the proposed layout. Include the proposed location of booths, tents, tables, portable toilets, rides, routes, etc.

Will the event have kiddie rides, inflatables (i.e. moonwalk), amusement rides, climbing walls, live animals, hot air balloon, etc.?

YES NO *If yes, additional insurance coverage will be required*

If yes, describe in detail the types of attractions proposed:

Will the event have food, beverage or concessions? YES NO

(Health department approvals and temporary food license requirements)

Describe:

water, bagels, assorted fruit will be provided to runners after the race.

Do you plan to have alcohol served at this event? YES* NO

** Include proposed location(s) on event layout*

If yes, Liquor Liability Insurance is required

If yes, describe measures to be taken to prohibit the sale of alcohol to minors or visibly impaired individuals.

Do you need electricity for this this event? YES* NO

** Include proposed locations on event layout*

If you do not identify all of the proposed locations that need electricity, the City cannot guarantee electricity will be made available for the duration of your event.

Do you plan to have special event signs? Yes No

Signs must conform to City ordinances

Describe signs, proposed locations, etc.

Signs will be displayed at the parking lot opening to direct people into the location. Along race route signs will point participants in the correct direction.

Do you plan to have banners?

Yes No

Describe banner, location, what it will be attached to.

Banner will outline the compete for a case event. This will be attached to the tent.

Application Check List (failure to provide necessary documentation will delay application review and approval)

Check the following items that are attached:

- Completed Application
- Event Map (includes detailed event layout for vendors, rides, booths, electrical needs, etc.)
- Detailed Plan showing road closures, sidewalk use, etc.
- Certificate of Insurance and Indemnification (due to City Clerk's Office within 1 week following notice of event approval)
- Sound Amplification Equipment Registration Statement
- Copy of Health Department approvals and temporary food license (for all food and beverage vendors)
- Liquor Liability Insurance (if serving alcohol)
- Signature Page
- Event Signage (description)
- Driver's License of Applicant

If document is missing, please explain:

The applicant and sponsoring organization understands and agrees to:

Provide a certificate of insurance with all coverages deemed necessary for the event, name the City of Mason as an additional insured on all applicable policies, and submit the certificate to the City Clerk's Office no later than one week following notice of the event approval.

Execute an Indemnification Agreement on the sponsoring organizations letterhead and submit it to the City Clerk's Office no later than one week following notice of the event approval.

Comply with all City and County ordinances and applicable State laws, City policies and acknowledges that the special events permit does not relieve the applicant or sponsoring organization from meeting any application requirements of law or other public bodies or agencies;

Promptly pay any billing for City services which may be rendered or deemed necessary as part of the event and event approval.

Applicant and sponsoring organization further understands the approval of this special event may include additional requirements and/or limitations based on the City's review of this application, in accordance with the City's Special Events Policy. The applicant and sponsoring organization understands that it may be necessary to meet with City staff during the review of this application and that City Council approval may be necessary. The applicant agrees the sponsoring organization will operate the event in conformance with the written approval.

Applicant understands that he/she (or the sponsoring organization) is responsible for contacting the Michigan Liquor Control Commission and/or the County Health Department to secure any and all permits required for this event.

As the duly authorized agent of the sponsoring organization, I hereby apply for approval of this Special Event and affirm the above understandings. The information provided on this application is true and complete to the best of my knowledge.

Indemnity, Hold Harmless and Insurance Agreement

In consideration of the closing of the public street and permitting its use by Complete for a Cause
(Name of Company)
 on the 17 day of September, ¹⁶2014, to the fullest extent permitted by law, the

Complete for a Cause
(Name of Company) agrees to defend, pay on behalf of, indemnify, and hold harmless the

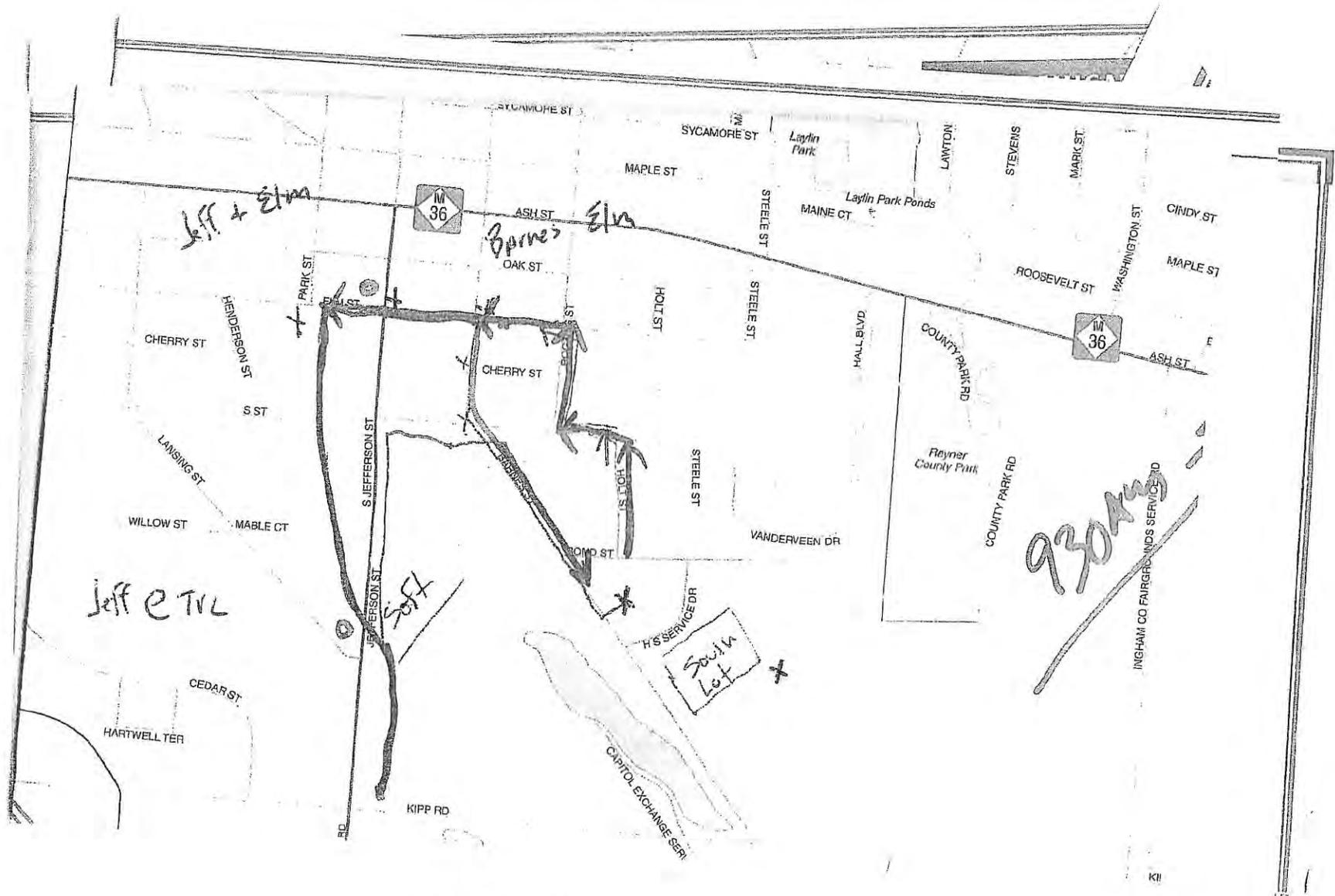
City of Mason, its elected and appointed officials, employees, agents and volunteers, and others working on behalf of the City of Mason against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City of Mason, by reason of personal injury or otherwise, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of, or is in any way connected or associated with (describe event).

Complete for a Cause
(Name of Company) further agrees to procure and maintain during the life of this

agreement, Liability Insurance for events of this nature on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and aggregate. Liability insurance, as described above, shall include an endorsement stating the following shall be additional insureds: The City of Mason, all elected and appointed officials, all employees and volunteers, agents, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Mason as additional insured, coverage afforded is considered to be primary and any other insurance the City of Mason may have in effect shall be considered secondary and/or excess.

By: Brooke Dippel

Applicant Signature <u>[Signature]</u>	Date <u>7-6-16</u>
Complete this application and return it, along with all required documentation, to the City Clerk's Office at least 21 calendar days prior to the starting date of the event. Please note that a new application must be	OFFICE USE: Application Receipt Date



4-way South

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 7E

AGENDA ITEM

Motion - Streets Closure Request – Benedict Auto Body – Customer Appreciation Day

EXHIBITS

Special Event Application – Benedict Auto Body – Customer Appreciation Day

STAFF REVIEW

Deborah Cwierniewicz, City Clerk (Lead)
Don Hanson, Police Sergeant
Kerry Minshall, Fire Chief
Ken Baker, Department of Public Works Director

SUMMARY STATEMENT

Darrell Benedict, owner of Benedict Auto Body, is requesting to close Maple Street to hold a Customer Appreciation Day event on Saturday, September 17, 2016, from 2:30 p.m. to 9:00 p.m.

Staff review confirmed there are no concerns or objections to the request. The estimated Police Department cost is \$300 for services. DPW estimated costs totaling \$188. However, the applicant may pick up and return the requested barricades to avoid charges for this service.

Applicant has been notified and is willing to pay for the services as described. There will be no cost to the City of Mason.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Move to approve the request of Darrell Benedict to close Maple Street from the east corner of his property, located at 246 W. Maple Street, to Lansing Street on Saturday, September 17, 2016, from 2:30 p.m. to 9:00 p.m.

City of Mason Special Events Application

Complete and return this application to the City Clerk's Office at least 21 calendar days prior to the starting date of the event.
A new application must be submitted each year.

Event		
Event Name: <u>Customer Appreciation Day</u>		
Event Purpose: <u>To thank our customers.</u>		
Sponsoring Organization Information		
Legal Business Name: <u>Benedict Auto Body Inc</u>	City: <u>Mason</u>	State/Zip: <u>MI 48854</u>
Address: <u>246 W Maple</u>	City:	State/Zip:
Mailing Address: <u>Same</u>	City:	State/Zip:
Telephone: <u>517-676-4970</u>	Email Address: <u>autodarrell@hotmail.com</u>	
Contact Name: <u>Darrell Benedict</u>	Title: <u>President/owner</u>	
Telephone: <u>517-676-4970</u>	Email Address: <u>autodarrell@hotmail.com</u>	
Contact Person on Day of Event		
Name: <u>Darrell Benedict</u>	Title: <u>President/owner</u>	
Address: <u>246 W Maple</u>	City: <u>Mason</u>	State/Zip: <u>MI 48854</u>
Telephone: <u>517-676-4970</u>	Cell Phone: <u>517-535-6327</u>	Email Address: <u>autodarrell@hotmail.com</u>
Type of Event (Check one)		
<input type="checkbox"/> City Operated/Sponsored Event	<input type="checkbox"/> Political or Ballot Issue Event	<input type="checkbox"/> Run Event
<input type="checkbox"/> Co-sponsored Event	<input type="checkbox"/> Wedding	<input type="checkbox"/> Other (describe)
<input type="checkbox"/> Non-Profit Event	<input checked="" type="checkbox"/> Block Party	
<input type="checkbox"/> For Profit Event	<input type="checkbox"/> Video or Film Production	
Event Information		
Event Location(s): <u>246 W. Maple Mason MI 48854</u> <u>in talk w/consumers for part of Dec Austin Park</u>		
Event Date(s): <u>September 17, 2016</u>		
Event Hours: <u>3:00 pm - 9:00 pm</u>		
Date/time for set up: <u>9/17/16 2:30pm</u>		
Date/time for clean up: <u>9/17/16 9:00 pm</u>		
Describe set up and clean up procedures:		

Estimated DAILY attendance: 750

Describe crowd control plans for this event:

People parking cars & controlling traffic

Describe the Special Event's impact on adjacent commercial and residential property:

A Signature Form must be attached.

Won't effect anyone. We are using Consumers park. We will have insurance to cover liability as well

Will sidewalks be used? YES NO

If yes, include a detailed map outlining the Sidewalks must be accessible for pedestrian traffic.

Describe sidewalk use: In front of Benedict Auto Body & Lee Austin Park.

Will street closures be necessary? YES NO

If yes, include a detailed map indicating road closures, emergency vehicle access, and barricade locations.

Describe street closures:

Close from front of building to Lansing street. ~~Street~~

* Streets closed: Date/Time:

9/17/16 1:00 pm

* Streets re-open: Date/Time:

9/17/16 9:00 pm

Will parking lot closures be necessary? YES NO

If yes, include a detailed map indicating proposed closures and barricade locations

Describe parking lot closures:

* Parking lot(s) closed: Date/Time:

* Parking lot(s) re-open: Date/Time:

What parking arrangements are proposed to accommodate attendance?

Will music be provided/included during the event? YES NO

Describe type of music proposed: Live Amplification Recorded Loudspeakers

Sound Amplification Equipment Registraton Statement must be completed and attached with receipt of payment.

Will the event require the use of any of the following municipal equipment:

Sponsoring organization should expect to be charged for use, placement, and maintenance of these items
*Sponsoring Organization may be required to supply a dumpster

- Trash Receptacles* Quantity: _____
- Barricades Quantity: 2
- Traffic Cones Quantity: _____
- Other (describe): _____

Will the following be constructed or located in the event area?

No stakes of any kind allowed in asphalt.

<u>Item</u>	<u>Quantity</u>	<u>Item</u>	<u>Quantity</u>
<input type="checkbox"/> Booths:	_____	<input checked="" type="checkbox"/> Tables:	<u>44</u>
<input type="checkbox"/> Tents:	_____	<input type="checkbox"/> Rides:	_____
<input type="checkbox"/> Awnings:	_____	<input type="checkbox"/> Portable Toilets:	_____
<input type="checkbox"/> Canopies:	_____	(may be required depending on event)	
<input type="checkbox"/> Rides:	_____	<input type="checkbox"/> Other (describe):	_____

You must attach a plan of the proposed layout. Include the proposed location of booths, tents, tables, portable toilets, rides, routes, etc.

Tables will be inside Facility.

Will the event have kiddie rides, inflatables (i.e. moonwalk), amusement rides, climbing walls, live animals, hot air balloon, etc.?

YES NO *If yes, additional insurance coverage will be required*

If yes, describe in detail the types of attractions proposed:

Bounce House
Dunk Tank

Both on Benedict
Auto Property

Will the event have food, beverage or concessions? YES NO

(Health department approvals and temporary food license requirements)

Describe:

Catered by The Wooden Nickel

Do you plan to have alcohol served at this event? YES* NO

* Include proposed location(s) on event layout

If yes, Liquor Liability Insurance is required

If yes, describe measures to be taken to prohibit the sale of alcohol to minors or visibly impaired individuals.

Do you need electricity for this this event? YES* NO

* Include proposed locations on event layout

If you do not identify all of the proposed locations that need electricity, the City cannot guarantee electricity will be made available for the duration of your event.

Do you plan to have special event signs? Yes No

Signs must conform to City ordinances

Describe signs, proposed locations, etc.

Signs that stick in ground.

Do you plan to have banners?

Yes No

Describe banner, location, what it will be attached to.

will be attached to something on Benedict Auto Body property

Application Check List (failure to provide necessary documentation will delay application review and approval)

Check the following items that are attached:

- Completed Application
- Event Map (includes detailed event layout for vendors, rides, booths, electrical needs, etc.)
- Detailed Plan showing road closures, sidewalk use, etc.
- Certificate of Insurance and Indemnification (due to City Clerk's Office within 1 week following notice of event approval)
- Sound Amplification Equipment Registration Statement
- Copy of Health Department approvals and temporary food license (for all food and beverage vendors)
- Liquor Liability Insurance (if serving alcohol)
- Signature Page
- Event Signage (description)
- Driver's License of Applicant

If document is missing, please explain:

The applicant and sponsoring organization understands and agrees to:

Provide a certificate of insurance with all coverages deemed necessary for the event, name the City of Mason as an additional insured on all applicable policies, and submit the certificate to the City Clerk's Office no later than one week following notice of the event approval.

Execute an Indemnification Agreement on the sponsoring organizations letterhead and submit it to the City Clerk's Office no later than one week following notice of the event approval.

Comply with all City and County ordinances and applicable State laws, City policies and acknowledges that the special events permit does not relieve the applicant or sponsoring organization from meeting any application requirements of law or other public bodies or agencies;

Promptly pay any billing for City services which may be rendered or deemed necessary as part of the event and event approval.

Applicant and sponsoring organization further understands the approval of this special event may include additional requirements and/or limitations based on the City's review of this application, in accordance with the City's Special Events Policy. The applicant and sponsoring organization understands that it may be necessary to meet with City staff during the review of this application and that City Council approval may be necessary. The applicant agrees the sponsoring organization will operate the event in conformance with the written approval.

Applicant understands that he/she (or the sponsoring organization) is responsible for contacting the Michigan Liquor Control Commission and/or the County Health Department to secure any and all permits required for this event.

As the duly authorized agent of the sponsoring organization, I hereby apply for approval of this Special Event and affirm the above understandings. The information provided on this application is true and complete to the best of my knowledge.

Indemnity, Hold Harmless and Insurance Agreement

In consideration of the closing of the public street and permitting its use by Benedict Auto Body
on the 17 day of September, 2014, to the fullest extent permitted by law, the
(Name of Company)

Benedict Auto Body agrees to defend, pay on behalf of, indemnify, and hold harmless the
(Name of Company)

City of Mason, its elected and appointed officials, employees, agents and volunteers, and others working on behalf of the City of Mason against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City of Mason, by reason of personal injury or otherwise, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of, or is in any way connected or associated with (describe event).

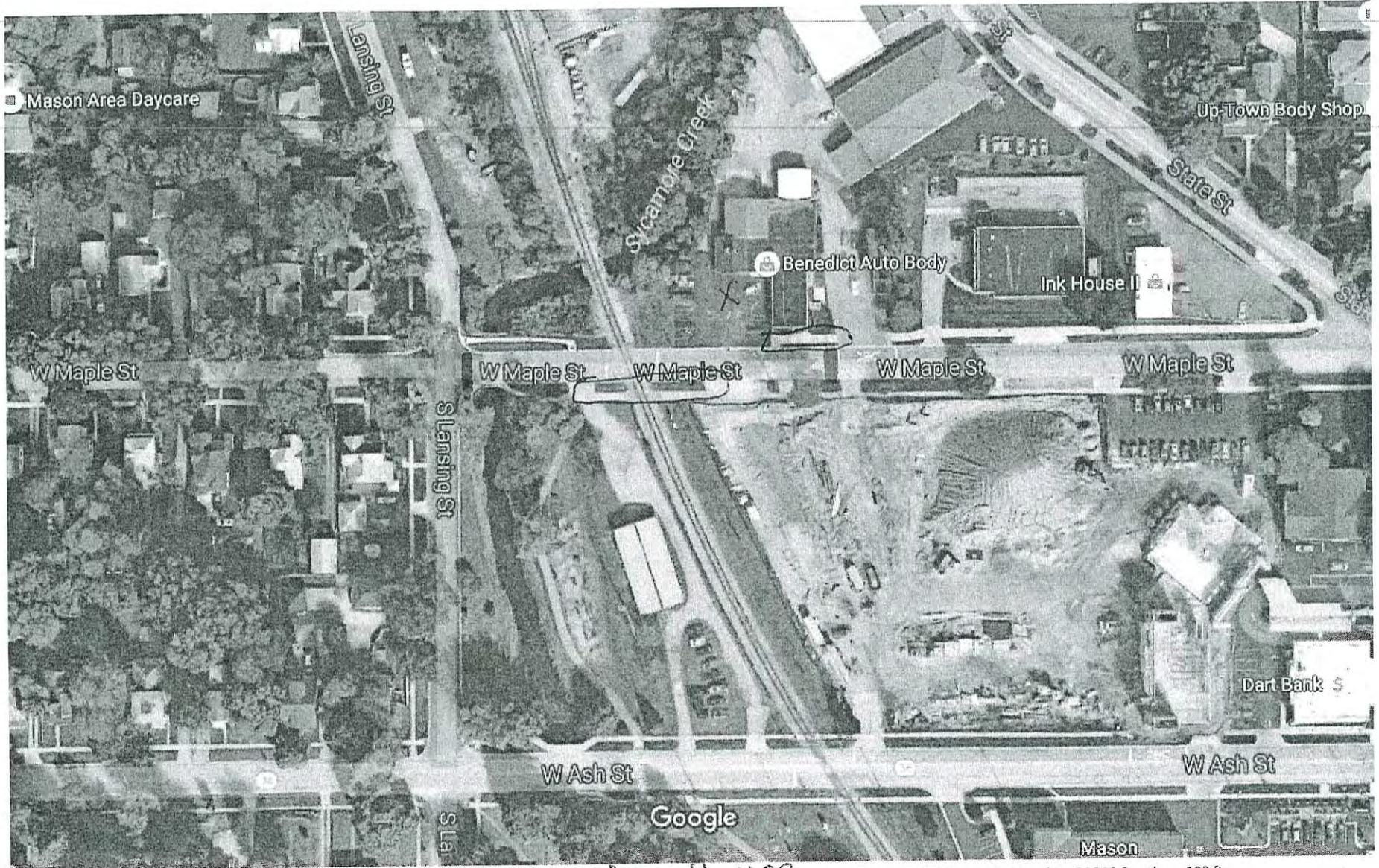
Benedict Auto Body further agrees to procure and maintain during the life of this
(Name of Company)

agreement, Liability Insurance for events of this nature on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and aggregate. Liability insurance, as described above, shall include an endorsement stating the following shall be additional insureds: The City of Mason, all elected and appointed officials, all employees and volunteers, agents, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the City of Mason as additional insured, coverage afforded is considered to be primary and any other insurance the City of Mason may have in effect shall be considered secondary and/or excess.

David Benedict By: Michigan Insurance

Applicant Signature	Date <u>8/26/14</u>
Complete this application and return it, along with all required documentation, to the City Clerk's Office at least 21 calendar days prior to the starting date of the event. Please note that a new application must be submitted each year.	OFFICE USE: Application Receipt Date April 2014

Go gle Maps



○ Barricade
 x Bounce House
 □ sidewalk use
 Tank

Imagery ©2016 Google, Map data ©2016 Google 100 ft

Google Maps

Sycamore

Benedict Auto Body

Vr

Ink Ht

1700 Sycamore St

1700 Sycamore St

1700 Sycamore St

1700 Sycamore St

Sycamore Creek

Haystack Entrance

35

Google

35

→ Barricade
Bounce House

Sidewalk
use
Dunk Tank

Map data ©2016 Google

50 ft

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 7F

AGENDA ITEM

Motion - Streets Closure Request – Mason High School Homecoming Parade

EXHIBITS

Parade Permit – Mason High School Homecoming Parade

STAFF REVIEW

Deborah Cwiertniewicz, City Clerk (Lead)
Don Hanson, Police Sergeant
Kerry Minshall, Fire Chief
Ken Baker, Department of Public Works Director

SUMMARY STATEMENT

The Homecoming Parade is an annual event held by Mason High School (MHS). The parade includes various floats, vehicles, horses, and MHS band.

Staff review confirmed there are no concerns or objections to the request. The estimated Police Department cost is \$300.00 for services. Department of Public Works estimated costs totaling \$337.00. However, the applicant may pick up and return the requested barricades to avoid the DPW charges for this service. The applicant has been notified and is willing to pay for the services described. There will be no cost to the City of Mason.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Move to approve the use of Oak, Jefferson, Maple, and Barnes Streets for the Mason High School Homecoming Parade, October 7, 2016, between 5:00 p.m. and 7:00 p.m.



PARADE PERMIT APPLICATION

APPLICANT

Name: Eric Hayne Phone: 290 3620
Address: 5950 Fairview Way
Parade conducted for: Mason High School Homecoming
Date of Parade: October 7, 2016 (Friday)
Organization's Representative and Title: Mason High Student Senate
Parade Chair: Eric Hayne Phone: 290 3620
Address: _____

PARADE ROUTE

Starting Point: Oak ct. & Jefferson Ending Point: M Hr Sath parking lot
Assembly Location: Oak st between Jefferson & Park Time of Assembly: 5 pm
Maximum space between units: 30 ft Minimum space between units: 10 ft
Maximum speed of units: 5 mph Minimum speed of units: foot speed
Maximum length of parade in miles: 1/2 Parade start time: 6 pm Approx. end time: 6:30 pm

ENTRIES

Number of Entries (People-Animals-Vehicles): 200
Type of Animals: Horses Description of Vehicles: Trucks & Trailers

USE OF RIGHT-OF-WAY

Parade Route (by street name): Jefferson to Maple to Barnes to High School

Name of State Trunkline Street(s) that are requested as part of route: M 36

For Office Use Only:

<p>Mason Police Department</p> <p>Parade Route:</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Disapproved</p>	<p>City Administrator</p> <p>Permit:</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Disapproved</p>	<p>Application to State for Use of Trunk Line Permit</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Disapproved</p>
<p><i>[Signature]</i></p>	<p><i>[Signature]</i></p>	<p>Fee: \$15.00 <input type="checkbox"/> Paid</p>

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 7G

AGENDA ITEM

Resolution – Authorizing Changes to the MERS Benefits for AFSCME Members Per the Approved Contract

EXHIBITS

Resolution – Defined Benefit Plan Adoption Agreement

STAFF REVIEW

Administration

SUMMARY STATEMENT

The Mason City Council approved the AFSCME Agreement at the August 15, 2016 City Council Meeting.

The Agreement, effective September 3, 2016 between the City of Mason and the AFSCME Local #1390 (General Union group in MERS), states in Article 31, "...The Benefit Plan for employees hired prior to July 1, 2013 will be B-3 with F-55/15 Rider. Employees in the B-3 Plan will contribute 11.5% toward the Plan for the duration of this Agreement."

MERS requires the Mason City Council to pass their resolution to make this change. With the approval of Resolution 2016-32 on August 15, 2016, the Mason City Council agreed the employees would pay 11.5% for the lifespan of the current Agreement, which terminates June 30, 2019.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Approve resolution changing MERS contribution from AFSCME employees to 11.5% for the lifespan of the current Agreement.

Introduced:
Second:



Defined Benefit Plan Adoption Agreement

1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmi.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Mason **Municipality #:** 3304

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible participant shall be credited as follows (choose one):

- All prior service from date of hire
- Prior service proportional to assets transferred; all service used for vesting
- Prior service and vesting service proportional to assets transferred
- No prior service but grant vesting credit
- No prior service or vesting credit

Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 01), the effective date shall be the first day of September, 20 16. *Please note:* You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. If this is to **separate employees** from an existing Defined Benefit division (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20__.

E. If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20__.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

01 General Union

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

Only retirees will be in this division.

These employees are (check one or both):

In a collective bargaining unit (attach cover page, retirement section, signature page)

Subject to the same personnel policy

To receive one month of service credit (check one):

An employee shall work 10 _____ hour days.

An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

Probationary Periods are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

Temporary employees in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: December 31, 20 14

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

Our MERS representative presented and explained the valuation results to the

_____ on _____.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

As an authorized representative of this municipality, I Deborah Stuart
(Name)
City Administrator waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

- 2. This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.
- 3. Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.
- 4. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

- Termination Final Average Compensation (calculated over the members entire wage history)
- Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

- 5. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years
- 6. Vesting (5 -10 yrs, increments of 1 yr) _____ years
- 7. Required employee contribution (Max 10%, increments of 0.01%) 11.50 %
- 8. Compensation, for retirement purposes, is defined as base wages and all of the following. Check applicable boxes to *exclude* these types from your MERS reported wages:
 - Longevity pay
 - Overtime pay
 - Shift differentials
 - Pay for periods of absence from work by reason of vacation, holiday, and sickness
 - Workers' compensation weekly benefits (if reported and are higher than regular earnings)
 - A member's pre-tax contributions to a plan established under Section 125 of the IRC
 - Transcript fees paid to a court reporter
 - A taxable car allowance
 - Short term or long term disability payments
 - Payments for achievement of established annual (or similar period) performance goals
 - Payment for attainment of educational degrees from accredited colleges, universities, or for acquisition of job-related certifications
 - Lump sum payments attributable to the member's personal service rendered during the FAC period
 - Other: _____
 - Other 2: _____

Defined Benefit Plan Adoption Agreement

9. Early Normal Retirement with unreduced benefits

- Age 50 with 25 years of service Age 50 with 30 years of service
 Age 55 with 15 years of service Age 55 with 20 years of service
 Age 55 with 25 years of service Age 55 with 30 years of service
 Any age with (20-30 yrs, in 1 yr increments) _____ years of service

10. Other

- Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the participant's benefit
 Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
 DROP + with _____%

11. Cost-of-Living Adjustment

<input type="checkbox"/> All current retirees as of effective date <input type="checkbox"/> Retirees who retire between ____/01/____ and ____/01/____ <i>(one time increase only)</i>	<input type="checkbox"/> Future retirees who retire after effective date
Increase of ____% or \$____ per month	Increase of ____% or \$____ per month
Select one: <input type="checkbox"/> Annual automatic increase <input type="checkbox"/> One-time increase	<input type="checkbox"/> Annual automatic increase
Select one: <input type="checkbox"/> Compounding <input type="checkbox"/> Non-compounding	Select one: <input type="checkbox"/> Compounding <input type="checkbox"/> Non-compounding
Employees must be retired ____ months (6-12 months, increments of 1 month)	Employees must be retired ____ months (6-12 months, increments of 1 month)

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event any conflict between MERS Plan Document and the MERS Defined Benefit Plan, the provisions of the Plan Document control.

Defined Benefit Plan Adoption Agreement

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 45A(3), and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

Defined Benefit Plan Adoption Agreement

VIII. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by City of Mason on
the 06 day of September, 2016.
(Name of Approving Employer)

Authorized signature: _____

Title: Mayor

Witness signature: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 7H

AGENDA ITEM

Resolution – Authorizing Mayor Waltz and City Administrator Stuart to Sign MDOT Contract for the Jefferson Street Trailhead Project

EXHIBITS

Resolution – MDOT Signature Authorization

STAFF REVIEW

Administration

SUMMARY STATEMENT

The City of Mason has been awarded a contract by the Michigan Department of Transportation (MDOT) for construction of a paved trailhead on South Jefferson as part of the Hayhoe Riverwalk that runs from the north to the south sides of the City near and along Sycamore Creek. On August 17, 2015, through Resolution 2015-43, the Mason City Council voted that matching funding had been committed for use on this project and authorized the City Engineer to act as the City's agent during project development and to sign any necessary project agreements.

The Mason City Council is required by MDOT to authorize two City officials to sign this contract to move forward with the project.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Move to approve the resolution authorizing Mayor Waltz and City Administrator Stuart to Sign MDOT Contract for the Jefferson Street Trailhead Project.

Introduced:
Second:

**CITY OF MASON
CITY COUNCIL RESOLUTION**

**AUTHORIZING MAYOR WALTZ AND CITY
ADMINISTRATOR STUART TO SIGN MDOT CONTRACT
FOR THE JEFFERSON STREET TRAILHEAD PROJECT**

September 6, 2016

WHEREAS, the City of Mason has been awarded Contract Number 16-5371, Job Number 33468-127748 through the Michigan Department of Transportation (MDOT);

WHEREAS, the contract includes construction of a paved trailhead on South Jefferson; and

WHEREAS, the Mason City Council is charged with naming the officials who are authorized to sign said contract.

NOW THEREFORE BE IT RESOLVED, that the Mason City Council authorizes Mayor Waltz and City Administrator Stuart to sign the MDOT Contract Number 16-5371, Job Number 33468-127748.

Yes ()

No ()

CLERK'S CERTIFICATION: I hereby certify that the foregoing is a true and accurate copy of a resolution adopted by the City Council at its regular meeting held Tuesday, September 6, 2016, the original of which is part of the City Council minutes.

Deborah J. Cwierniewicz, City Clerk
City of Mason, Ingham County

CITY OF MASON

STAFF AGENDA REPORT TO CITY COUNCIL

Meeting Date: September 6, 2016

Agenda Item: 10A

AGENDA ITEM

Motion- Authorizing the Rejection of the Proposal from Capital Regional Airport Authority (CRAA) to Manage Jewett Field

EXHIBITS

Proposal from CRAA
Administrator's Evaluation of the CRAA Proposal

STAFF REVIEW

City Administrator

SUMMARY STATEMENT

Over the last few months, staff was asked to evaluate a proposal by the Capital Regional Airport Authority (CRAA) to shift management of the Jewett Field to local control to provide better oversight, potential cost savings due to labor travel, and improved service/development. This proposal was received by the City on August 13, 2015. As part of that evaluation, staff has reviewed the terms of the proposal, discussed airport management with other municipal operators of similar size and consultants, included members of the LDFA to discuss financing options, and met with stakeholders and the CRAA to discuss the details of the proposal.

After an extensive review outlined in the attachment, it became clear to staff that the liability associated with the management of the airport is too extensive to outweigh the minimal advantages to the City.

CITY ADMINISTRATOR'S RECOMMENDED ACTION BY CITY COUNCIL

Motion authorizing the rejection of the proposal from Capital Regional Airport Authority (CRAA) to manage Jewett Field

Capital Region Airport Authority
Mason Jewett Field
Airport Management Agreement Proposal
August 13, 2015

Introduction: The following is a list of conceptual operating terms that could be used to structure a management agreement for Mason Jewett Field. The agreement would be with a management group, yet to be named, but made up of representatives of interested parties from the Mason, MI community (*i.e. airport tenants, City of Mason, Vevay Township*) who recognize the economic impact of Mason Jewett on the surrounding Mason region. At this point I will call the group Mason Airport Management, LLC.

Airport Authority Objectives: Under this management agreement the Authority is focused upon attaining the following objectives in conjunction with the Mason region. Namely to establish a management process that:

- A. Ensures that Mason Jewett Field can develop to meet the aviation needs of the Mason area.
- B. Develops the level of revenue necessary to cover airport operating costs and meets the matching share of funding for federal grants.
- C. Eliminates the need for the Airport Authority to prorate a portion of Authority Administrative costs to a Mason Jewett cost center which contributes to the Mason Jewett deficit situation.
- D. Places Mason Jewett Field in the hands of a management team that has a vested interest in ensuring the airports success.

Proposed Agreement Terms:

- A. Airport Authority Obligations Under the Management Agreement:
 - 1. The Capital Region Airport Authority would delegate, under a management agreement, the management of Mason Jewett Field (land within the perimeter fence and associated Authority owned buildings & equipment) to the Mason Jewett Airport Management, LLC (*aka. Airport Management*) for an initial ten (10) year period, which term would automatically renew for additional 10 year periods unless terminated by mutual agreement by the parties.
 - 2. The Authority would continue serving the role of “sponsor” for State and Federal grants, providing all administration for grants and capital improvement funding under the agreement at no cost to Airport Management.
 - 3. The Airport Authority would retain all mineral rights, and any associated revenues, to the Mason Jewett land under this management agreement.
 - 4. The Airport Authority would continue to manage all land outside of the perimeter fence and retain any associated revenues generated from that land.
 - 5. The Airport Authority would have no obligation to pay Mason Jewett operating and capital expenses; nor would it have any right to receive any revenue generated through airport aeronautical activities, services, fuel sales, or sublease agreements / arrangements.
 - 6. The Airport Authority would provide initial airport management training and operational guidance to *Airport Management* and its staff at no cost as necessary to ensure compliance with federal regulations. Additional guidance and support would be provided

upon request. This includes ongoing training of maintenance and other Airport Management employees assigned to work at/on Mason Jewett Field.

7. Mason Jewett Field ownership, and the ownership of one hangar, would remain with the Airport Authority, subject only to Airport Management's ability to use land and facilities to generate revenues to pay operating and capital expenses.

B. Mason Jewett Airport Management, LLC Obligations under Management Agreement:

1. Airport Management would have the latitude to develop aeronautical related businesses on Mason Jewett as necessary to generate revenue for the airport and further economic benefit for the Mason region, with the consent of the Authority.
2. Airport Management would keep any proceeds from net revenues generated through the operation of the airport.
3. Airport Management would be responsible for the daily operation, maintenance and capital development of the Mason Jewett Field on behalf of the Mason community under the oversight and direction provided by the Airport Authority.
4. Airport Management would receive all operating revenues and cover all operating expenses related to the Mason Jewett operation.
5. Tenant lease agreements would be assigned to, and managed by, Airport Management so that all on airport rental and other revenues would be paid directly to Mason Jewett Field.
6. Airport Management would be assigned the custody of all Mason Jewett equipment and facilities, and be required under the agreement to maintain and replace those facilities as necessary.
7. Airport Management would be assigned the custody of the Mason Jewett fuel farm and would maintain fuel inventories as well as set retail fuel pricing necessary to generate the highest level of revenue to support airport operations & maintenance.
8. Airport Management would be obligated to maintain a liability insurance policy covering its staff and activities, in a type and amount satisfactory to the Airport Authority and name the Authority as additional insured.
9. Airport Management would participate in the Mason Jewett capital improvement program and pay the matching share related to the receipt of State and Federal grants.
10. Any portion of the leased land that should cease to be used for an aeronautical purpose would revert back to the direct control of the Airport Authority.

It is believed that the above list of terms meets the objectives detailed above, but that is certainly open for discussion. Ideally, this concept would enable the Mason community to get actively involved in the management of their airport with very little risk; to become educated / experienced in the art of airport management; and to directly and factually evaluate the economic value of Mason Jewett to the Mason region. At the end of the initial 10 year period, assuming a positive experience, the Authority could transfer ownership of Mason Jewett Field to the City of Mason or Vevay Township, or a combination of both, with the operation of the airport remaining with Airport Management.

Robert F. Selig, AAE
President - CEO

JEWETT AIRFIELD EVALUATION

Information Summary

CRAA is proposing options to shift management of the airfield to local control to provide better oversight, potential cost savings due to labor travel, and improved service/development.

Proposed structure (8/13/15):

Airport Authority Responsibilities

1. Management (not ownership) delegated to Mason for 10 years, automatic renewal
 - *CRAA is willing to discuss a transfer over time*
 - *CRAA confirmed that due to their receipt of federal funds last year, they are required to keep the airport open for 20 years unless they repay the federal funding.*
2. Sponsor federal grants and match
 - *The City would require a sponsor in order to apply for funding, no concerns.*
3. Maintain all mineral rights
 - *CRAA was willing to provide this to the City if ownership shifted.*
4. Manage all land outside the fence and revenue associated with it
 - *CRAA confirmed that they plan to sell any developable property and that would not be part of this proposal. The additional run way is off the table due to the data not supporting a need for it and that land will also be sold.*
5. No liability for operating costs and no revenue from operations.
 - *The airport is operating on a loss of approximately \$90,000 (2015 actual- \$86,411, 2016 budget-\$94,298). We would anticipate that the losses would not decrease under our control and may increase.*
 - *CRAA proposed covering short falls for a short period of time, but ultimately the liability would shift to the City of Mason.*
6. Ownership of one hanger
 - *No concerns with this item.*

Mason Responsibilities

1. Ability to only develop aeronautical related businesses
 - *This restriction is federal law, but does restrict the ability to develop other uses on the site.*
2. Receive all proceeds from operations
 - *In reviewing their current balance statements and the projections, there would be no revenues above expenditures for the airport. (See Item 5 under previous section)*

3. Daily operations, maintenance, operating expenses under CRAA oversight
 - *Staff would report to the CRAA board and this would be strictly a management agreement until there was transfer. While, we have staff nearby that would reduce travel time and shared labor costs. It is unlikely that the City could provide these services for less cost than the CRAA due to our labor contracts and limited staff resources requiring us to hire additional staff.*
 - *All leases would be assigned to the City of Mason for management. While LCC is established tenant at the airfield making tenant revenue stable, there would still be an increase legal costs and management time.*
 - *There is an active tenant association focused on making the airfield a success that would be helpful in the development. However, it is clear they have visions for the airport that would not be feasible for CRAA or the City of Mason to complete. Example, adding the additional runway, less security, and development on Kipp. None of those options would be viable at this time due to restrictions on the airport by the regulatory agencies.*

4. Assigned equipment and facilities- with requirement to repair and maintain
 - *There is a large liability in equipment that would need to be replaced and maintained outside of their operations budget that is currently losing money. Equipment includes vehicles, mowers, plows, and all the three facilities that need to be maintained. This would including everything from roofs and runway lighting to water heaters and furnaces with no additional revenue to build up for replacement.*

5. Assigned fuel farm and inventory
 - *No concerns with this item, this is a very market sensitive item and not the revenue generator we were hoping for.*

6. Maintain liability insurance
 - *Unknown amount, but additional cost to the City*

7. Capital Improvements- required to match CRAA for grants
 - *After evaluating their CIP, the city would be asked to provide \$144,700 over the next nine years. That is 5% match for the federal grant. Considering the revenues are less than expenditures, there will be no ability to grow a fund balance to cover these expenditures. This will be a General Fund expense.*

8. Any land not leased for aeronautical business immediately revert to the CRAA
 - *This restriction is federal law, but does restrict the ability to develop other uses on the site.*

Other points of Evaluation:

- **Other communities:** I was unable to find ANY other community where the General Fund does not subsidize their municipal airport. However some noted that they felt it was an investment worthy of that contribution to make the airport viable for the community.
- **Building Market:** We confirmed with CRAA that investments by Dart Bank and Jackson National Life in CRAA would restrict any likely corporate use. They also noted that most of their planes would not be able to fly out of Mason. The likelihood of them splitting their fleet is unlikely especially as they have specifically noted security concerns to CRAA at their current location, which is much more secure than Jewett.
- **Consultants:** Contacted to discuss the option of a feasibility study for financial and space planning and they estimated it would cost between \$50-60,000. They noted that they were not aware of any airport our size that broke even and that you should count on subsidizing.
- **Additional Funding:**
 - A 425 would be required before the City would consider this. While Vevay is willing to consider this the estimated revenue for the City would be \$10,945. This increase in taxes will not support the shortfalls.
 - The LDFA discussed feasibility of expanding their TIF district to assist in financing, but with the minimal capture available, it is not a viable option.

Next Steps:

City Council determine one of the following options:

1. Reject the proposal from CRAA and determine that there is no interest in further exploration of this issue at this time. OR
2. Direct the City Administrator to continue to negotiation and authorization of a feasibility study (at least \$50,000) to consider the following:
 - Financial evaluation of airport and sustainability as is
 - Future for potential development and areas of development on the site

RECOMMENDED ACTION FROM THE CITY ADMINISTRATOR:

The Council will be faced with difficult decisions in the next few years regarding budget constraints. This is a time to evaluate critical services that are widely used by our residents. It will be difficult to have those discussions while taking on additional liability and a large impact to our General Fund for a service that is utilized by very few of our City residents.

I recommend that the City Council reject the proposal and allow staff to focus on the priority services of the City at this time.

McGINTY, HITCH, HOUSEFIELD, PERSON,
YEADON & ANDERSON, P.C.

MEMORANDUM

TO: Mason City Council

FROM: Thomas M. Hitch, City Attorney 

RE: ***J & J Properties of Mason, LLC v Mason Public Schools, et al***
Ingham County Circuit Court File No. 13-1269-CK

DATE: August 30, 2016

The purpose of this memorandum is two-fold. The first is to transmit to Council copies of a License Agreement with the Jackson & Lansing Railroad Company and an Easement Agreement with Consumers Energy which would permit the installation of an enclosed storm water drain that runs across property owned by both the Railroad and Consumers Energy. The City would own the drain upon the completion of the storm sewer project which is being constructed to settle the above-referenced litigation.

The City is the licensee and grantee of the two instruments, as the City will be the ultimate owner of this storm drainage facility. The attorney for the School Board negotiated both the License Agreement and the Easement Agreement and asked for my approval. After conferring with representatives of Consumers Energy as it relates to the easement, and after having reviewed the License Agreement approved by the Railroad, it is my recommendation that these agreements be accepted and approved by the Mason City Council. I believe that this storm drainage project will enhance the value of the property and, as I am informed by the project engineer retained by the School Board, this will relieve the surrounding landowners (including J & J Properties) of the storm drainage problem created when the high school was originally built. It is my recommendation that the Mayor and City Clerk be authorized to sign these agreements on behalf of the City.

The second purpose of this memo is to set out the City's proposed involvement in bringing this matter to a conclusion – not only in settling the case, but in facilitating the construction of the storm water drain. As Council approved last year, I have been involved in facilitating and working with the parties in order to gather the appropriate easements (and licenses) and assist, however the City may, in resolving this litigation. It was initially anticipated that J & J Properties and the School Board would, as joint venturers in this project, be the entities to contract with the engineers and contractor to complete this project. The further review by the attorney for the School Board disclosed that under Michigan law, the School Board may not enter into any joint venture. No other party was in the position to be the "owner" because the School Board would be required to transfer money to a private individual. The only entity that can assist in surmounting this legal problem is the City.

In order to do that, it is my recommendation that the City authorize me, as City Attorney, to intervene in this litigation as a party defendant. The order of intervention would provide that the City not participate in any of the litigation, not be required to file an answer, and the City would only be a participant in order to facilitate the settlement. The City would then be subject to a stipulated court order setting forth the terms of the settlement agreement between the parties. Under the court order, the School Board, J & J Properties, and Capex Land Company, Inc. (an entity owned by George Hayhoe) would pay money to the City in order for the City to act as the "owner."

As owner, the City would enter into a contract with the contractor (and potentially with the project engineer, if necessary), but would not be involved in the construction, other than as it would be in normal public projects such as this. The City's engineer (Wolverine Engineering) will provide plan review and inspection. All of the fees for city permits, if necessary, review and inspection fees of Wolverine Engineering will be covered by and divided equally among J & J Properties, Mason Public Schools, and Capex Land Company, Inc. The storm sewer will be built to City-standards and, once the storm sewer has had its final inspection and there is confirmation that all of the City's requirements have been met, the storm drain will be made part of the City's storm drainage system.

The order will provide that the sole cost, other than the City's attorneys fees, will be borne by the three entities listed above, and that there will be no contribution on the part of the City. Viewed in this light, it is my opinion that this is essentially identical to the typical circumstance where a developer, in building a storm collection system in a proposed subdivision, and upon meeting all of the City's requirements, turns over the storm collection system to the City.

Attached is a resolution that I have drafted authorizing the Mayor and City Clerk to execute the License and Easement Agreements, and authorizing the City Attorney to enter an appearance as a party defendant in the litigation referenced above for the sole purpose of assisting and facilitating the resolution of this litigation.

I will be at the City Council meeting on September 6 to address any concerns or answer any questions regarding this matter.

bks
Enclosures (3)

LICENSE AGREEMENT

THIS AGREEMENT (hereafter this "License Agreement") is made as of the ___ day of July, 2016 by and between JACKSON & LANSING RAILROAD COMPANY, a Michigan corporation, having a business address located at 38235 Executive Drive, Westland, Michigan 48185 ("Licensor") and CITY OF MASON, a Michigan Municipal Corporation, whose address is 201 W. Ash Street, Mason MI 48854 ("Licensee").

Recitals

WHEREAS, Licensor is the holder of certain rights and privileges with respect to rights-of-way utilized in the operation of Licensor's railroad business; and

WHEREAS, Licensee has requested that Licensor enter into this License Agreement granting Licensee the non-exclusive right to use the right-of-way identified herein for the maintenance, improvement, and construction of a storm water outlet Drain with related appurtenances.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I GRANT OF LICENSE

Grant of License Agreement. Licensor hereby grants unto Licensee a non-exclusive right to utilize a portion of Licensor's railroad right-of-way ("RW Route") for the purpose of constructing, operating, maintaining, repairing, and inspecting, storm water outlet Drain ("Drain") to make a transverse underground crossing of the RW Route at or about the following location:

THE NORTH 40 FEET OF THAT PART OF THE RAILROAD
PROPERTY LYING IN THE SOUTH 1/2 OF THE
SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1
WEST, CITY OF MASON, INGHAM COUNTY, MICHIGAN (as set
forth in **Exhibit A**).

PP# 33-19-10-09-503-001

Section I.01 Limitations on Grant. Licensee acknowledges that the grant hereunder is a license agreement and not a lease or easement, and made without covenants, representations or warranties in respect of Licensor's (i) right to make the grant, (ii) title in the RW Route, or (iii) right to use or make available to others the RW Route for the purposes contemplated herein so long as such use does not interfere with Licensee's rights hereunder.

Licensee further acknowledges that the RW Route may be subject to conditions,

covenants, easements, encroachments, leases, licenses, mortgages, indentures, reversionary interests, zoning restrictions and other burdens and limitations, of record and not of record, and that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee shall hold harmless and indemnify Licensor, its affiliated companies, and its and their respective officers, agents and employees, from and against any detriments to or liabilities of Licensee arising from such claims, including forfeitures declared or occurring as a result of this grant.

ARTICLE 2 USE OF RW ROUTE

Section 2.01 Use of RW Route. Licensee shall have the right to install the Drain, across through the RW Route at locations to be approved by Licensor under Section 6.01.

Section 2.02 Limitations on Use of RW Route. Licensee shall use the RW Route only for the purpose of constructing, operating, maintaining, repairing, inspecting, replacing, improving, and removing the Drain. Licensee acknowledges that its use and occupancy of the RW Route are non-exclusive and subject and subordinate to the prior and continuing right and obligation of Licensor to: (i) use the RW Route in performing services as a railroad; and (ii) install and to permit others to install such streets, conduits, pipelines, power lines, communications lines, and other facilities in, above, upon, over, under, across, along and through the RW Route as Licensor may reasonably deem necessary or convenient for the continued operation of railroad services, but in no event shall such installations come in contact with or interfere with Licensee's facilities, and further provided that all facilities crossings under or over Licensee's facilities, and all work performed within 20 feet of Licensee's facilities shall be done in compliance with all applicable safety codes. Nothing in this License Agreement shall be deemed or construed as a limitation on Licensor's right to abandon or discontinue transportation service over any portion of the RW Route.

ARTICLE 3 EFFECTIVE DATE AND TERMINATION

Section 3.01 Effective Date. This License shall become and be effective as of **July 1, 2016** (the "Effective Date"), and shall be terminable upon not less than thirty (30) days' notice served or given by either party hereto to the other provided on or after **June 30, 2066**; provided, however, that this License may be immediately terminated upon violation of any of the terms hereof by Licensee.

Section 3.02 Termination. Upon the termination of this License Agreement, Licensee shall immediately remove its facilities and appurtenances from Railroad Property and restore the Railroad Property to a condition consistent with the surrounding rail. If the Licensee fails or refuses to remove its facilities and appurtenances under the foregoing conditions, Licensor may elect to do so at the cost and expense of the Licensee and Licensor shall not be liable in any manner to the Licensee for such removal.

**ARTICLE 4
CONSIDERATION**

Section 4.01 Initial Administration Fee. Licensee shall pay to Licensor a one-time fee of one thousand five hundred (\$1,500.00) dollars for administrative services in creating, and reviewing documents for this project along with other overhead costs associated with this project. Said fee shall be due upon the signing of this agreement.

Section 4.02 Annual License Fee. Commencing on the Effective Date, Licensee shall pay ten dollars (\$10.00) annually (the "Annual License Fees") to Licensor. The Annual License Fees shall be payable annually in advance with the first such payment due upon the signing of this License Agreement, and subsequent payments during the Term shall be due and payable on each anniversary of the Effective Date. Annual License Fees not paid within thirty (30) days of the due date shall accrue interest at ten (10%) percent per annum until paid in full.

**ARTICLE 5
LICENSEE'S ENTRY AND PRESENCE ON RW ROUTE**

Section 5.01 Entry and Presence on RW Route. Licensee may enter upon, and may cause its employees, agents and contractors to enter upon the RW Route only for the purpose of constructing, operating, maintaining, repairing, inspecting, replacing, improving, and removing the Drain. Licensee's employees, agents and contractors shall not enter upon the RW Route without giving Licensor at least five (5) days advance written notice, except in the case of emergency repairs, as to which Licensee shall give Licensor notice by telephone as far in advance as possible whenever practical. Contact information for Licensor personnel to be notified in the event of an emergency is set forth on **Exhibit B**. Contact information for Licensee's representatives is set forth on **Exhibit C**.

**ARTICLE 6
ENGINEERING AND CONSTRUCTION OF DRAIN**

Section 6.01 Preparation and Approval of Engineering and Construction Plan. Before beginning the initial construction of the Drain, Licensee shall submit to Licensor for Licensor's advanced written approval, engineering and construction plan, which Licensor shall approve, approve conditionally, or reject in writing within fifteen (15) days. If Licensor conditionally rejects or approves Licensee's plan, Licensor shall confer promptly with Licensee on revisions necessary to obtain approval, and shall approve, approve conditionally or reject Licensee's revised plan(s) within fifteen (15) days of submission, until Licensee has obtained final approval. Before beginning any subsequent construction of the Drain, Licensee shall submit to Licensor for Licensor's advanced written approval, engineering and construction plan, which Licensor shall approve, approve conditionally, or reject in writing within forty-five (45) days. If Licensor conditionally rejects or approves Licensee's plan, Licensor shall confer promptly with Licensee on revisions necessary to obtain approval, and shall approve, approve conditionally or reject Licensee's revised plan(s) within thirty (30) days of submission, until Licensee has obtained final approval. Licensee understands and acknowledges that no construction activities shall

commence without Licensor's final approval of the engineering and construction plan. Upon completion and approval of the engineering and construction plan (or such other definitive documentation of the Drain as Licensor and Licensee may employ), the plan may be attached hereto (without formal amendment of this License Agreement) as a supplement to **Exhibit D**.

Section 6.02 Permits and Approvals. Licensee shall be responsible for obtaining all permits and governmental approvals required to implement the engineering and construction plan for the Drain at its sole cost and expense.

Section 6.03 Licensor's Cooperation. Licensor agrees to provide reasonable cooperation to assist Licensee in preparing and implementing the engineering and construction plan for the Drain, including: (i) meeting in person and conferring by telephone with Licensee to discuss Licensee's preliminary plans; (ii) escorting Licensee on inspection trips of the RW Route; and (iii) providing maps and other data relating to the RW Route in Licensor's possession which are reasonably accessible and not of business sensitivity or subject to confidentiality protections. Licensee acknowledges that maps and other materials supplied by Licensor may not have been prepared as real estate title maps, and that the property lines, right-of-way lines and other information may not be accurate or correct. Licensee further acknowledges that the absence of markers or monuments on such maps or on or about the RW Route indicating the presence of subterranean facilities or other occupations does not constitute a warranty or representation by Licensor that none exist. Licensee accepts this License Agreement and Licensor's cooperation hereunder cognizant of the fact that Licensee's engineering and construction costs may increase by reason of undisclosed occupations or obstructions of the RW Route, and Licensee agrees to accept sole responsibility for such costs.

Section 6.04 Scheduling and Prosecution of Construction. Upon approval of Licensee's engineering and construction plan, Licensor and Licensee shall determine a mutually convenient schedule for construction of the Drain. Upon commencement of construction, Licensee shall work diligently toward completion, subject to unavoidable delays, including strikes, acts of God, litigation, legal or administrative proceedings, inability to obtain labor or materials, governmental restriction, enemy action, civil commotion, fire, unavoidable casualty and other causes beyond the reasonable control of Licensee.

Section 6.05 Cost of Construction. Licensee shall bear the entire cost and expense of constructing, operating and maintaining the Drain. Licensor shall have the right to post notices of non-responsibility upon the RW Route, and to otherwise notify any entity or person supplying services or materials in connection with the Drain that Licensor is not responsible for the cost thereof. Licensee agrees to pay Licensor a Labor Rate of one hundred and five (\$105.00) dollars per man-hour for Licensor's performance of any reasonable monitoring, labor, or work in connection with construction or maintenance of the Drain, including watchmen, flagmen, inspectors, train crews, communications personnel and signalmen, and supervisors, as Licensor may deem necessary or appropriate in its sole discretion for the protection of Licensor's personnel, property and operations. Said Labor Rate shall increase at a rate of three percent (3%) annually starting five years after the effective date of this Agreement. Payment of Licensor's costs and expenses under this Section 6.05 shall be made within forty-five (45) days of Licensee's receipt of

an invoice from Licensor. Payments not received when due shall accrue interest at a rate of ten (10%) percent per year until paid in full.

Section 6.06 Late Notice. If Licensee provides Licensor less than five (5) days' notice as required by Section 5.01, Licensee agrees to pay Licensor an Expedited Labor Rate of one hundred and fifty (\$150.00) dollars per man-hour for Licensor's performance of any reasonable monitoring, labor, or work in connection with construction or maintenance of the Drain, including watchmen, flagmen, inspectors, train crews, communications personnel and signalmen, and supervisors, as Licensor may deem necessary or appropriate in its sole discretion for the protection of Licensor's personnel, property and operations. Said Expedited Labor Rate shall increase at a rate of three percent (3%) annually starting five years after the effective date of this Agreement. Payment shall otherwise be made pursuant to the terms of Section 6.05.

Section 6.07 General Engineering and Construction Specifications. The parties hereby adopt the following general engineering and construction specifications for the Drain, which may be modified only upon Licensor's approval (which may be given in the form of Licensor's approval of the engineering and construction plan). No materials or equipment used in constructing the Drain shall be placed within fifteen (15) feet of the center line of any track. The Drain shall be installed below ground level and shall not utilize structures, fixtures or improvements located on or about the RW Route except as approved by Licensor (which approval may take the form of approval of Licensee's engineering and construction plan). The Drain will be constructed consistent with the specifications developed by the American Railway Engineering and Maintenance-of-Way Association. Additional general engineering and construction specifications will be set forth in **Ehibit D** as they are created. Approval of this license agreement by Licensor is subject to the approval of the engineering and construction specifications of each crossing of Licensor's right-of-way at the Licensor's sole discretion. Such engineering and construction specifications shall include a drawing detailing what will be crossing the RW Route, the depth of any buried crossing of the RW Route, the height of any aerial crossing of the RW Route, and the location of all materials or structures within the crossing of the RW Route.

Licensee shall not dispose of or release waste of any kind, whether hazardous or not, on the RW Route, and shall not conduct any activity requiring a hazardous waste treatment, storage, or disposal facility permit.

Section 6.08 Ownership of Drain. The Drain shall be and remain the personal property of Licensee, notwithstanding the fact that it may be affixed or attached to the RW Route, and shall, during and after the Term (except as title may be transferred to Licensor under Section 12.02), belong to and be removed by Licensee. Licensee shall have the right to file public notice of the presence of the Drain pursuant to and in compliance with the Uniform Commercial Code.

ARTICLE 7

PROTECTION OF RW ROUTE AND COMMUNICATIONS FACILITIES

Section 7.01 Compliance with Licensor's Directions and Laws Governing RW Route. Licensee acknowledges that control and supervision of the RW Route shall remain with

Licensors at all times during construction, operation and maintenance of the Drain, and that Licensors may in its sole discretion require Licensee, its employees, contractors and agents to cease their activities on and vacate the RW Route if they fail to comply with Licensors' directions for the safety and protection of Licensors' personnel, property and operations. Licensee shall at all times conform to, and cause all persons using or occupying the RW Route to conform to, all applicable laws, ordinances, rules, orders and regulations, including those relating to health, safety, noise, environmental protection, waste disposal and air and water quality.

Section 7.02 Inspection of Drain-Work on RW Route. Licensors shall have the right to inspect the RW Route and the Drain to determine whether Licensee's undertakings pursuant to this License Agreement are being complied with, and to maintain, repair or alter the RW Route in its sole discretion; provided, however, that Licensors shall not disturb the Drain without giving prior notice to Licensee. Licensee may request, and Licensors shall make a good faith effort to accommodate such a request, to be present during any activities of Licensors posing a risk of disturbance to the Drain; provided, however, that under no circumstances shall Licensors be obligated to postpone or delay its activities on the RW Route to accommodate Licensee's presence, or pay any costs associated with licensee's presence or lack thereof in connection with said Licensors' activities.

Section 7.03 Non-Interference with Rail Operations; Relocation of Drain. Licensee represents and acknowledges that the Drain is to be constructed, operated and maintained in a manner not interfering with Licensors' use of the RW Route for railroad operations. In the event that Licensors determines in its sole discretion that the construction, alteration or removal of railroad facilities necessitates relocation of the Drain, Licensee, at its sole expense and following receipt of notice from Licensors, shall, within a reasonable time, relocate the Drain to such other location within the RW Route or other rights-of-way owned or held by Licensors as Licensors may designate.

Section 7.04 Risk of Harm from Rail Operations. Licensee acknowledges that Licensors' railroad operations routinely involve the movement of heavy equipment, track construction and maintenance, excavation, demolition and other activities on or about the RW Route that pose an inherent risk of harm to the Drain. Licensors acknowledges the serious and essential nature of the functioning of the Drain and Licensee's services and agrees to take reasonable precautions to avoid such harm. Except in the case of an emergency, Licensors shall notify Licensee in advance of activities that may reasonably be foreseen as risking harm to the Drain. In the event of harm to the Drain or interruption of services from Licensors' railroad operations, Licensors shall bear all costs and expenses necessary to restore full and continuing operations.

ARTICLE 8 TAXES, LIENS AND INSURANCE

Section 8.01 Taxes. In addition to the other sums due hereunder, Licensee shall pay and discharge all taxes, general and special assessments and other charges of every description (collectively, "Impositions") (i) which may be attributable to, separately levied upon or assessed against Licensee's permitted occupancy of the RW Route, or (ii) for which Licensors may become liable as a result of such occupancy.

Section 8.02 Liens. Licensee shall discharge any liens or encumbrances filed with respect to the RW Route as a consequence of work, labor, services, goods or materials supplied to or for the benefit of Licensee. If Licensee fails to discharge any such liens within forty-five (45) days following notice, Licensor may pay such sums as may be necessary to discharge the liens and such sums shall be immediately due and payable by Licensee, and shall bear interest at fifteen (15%) percent per annum until paid.

Section 8.03 Insurance. Licensee agrees to carry during the term of this License Agreement, Excess Liability Insurance (including General Liability, contractual liability and Railroad Protective Liability) covering claims for Bodily Injury, Property Damage and Personal Injury Liability in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate. A certificate of insurance with appropriate limits of liability will be issued to the Licensor evidencing the Excess Liability coverage and naming the Licensor as an additional insured. The Excess Liability certificate shall provide a minimum of thirty (30) days' advance written notice of cancellation or material change in coverage and shall be furnished to Jackson & Lansing Railroad Company Attn: General Council, 38235 Executive Drive, Westland, Michigan 48185, or such other address as Licensor may provide to Licensee.

ARTICLE 9 INDEMNIFICATION

Section 9.01 Indemnification. Licensee agrees, to the maximum extent allowed by law, indemnify, defend and hold Licensor harmless from and against any claims or liability arising from the construction or existence of the Drain.

ARTICLE 10 CONDEMNATION

Section 10.01 Material Taking. In the event of a material taking or condemnation by any competent authority for any public or quasi-public use or purpose of the whole or a part of the RW Route during the Term, this License Agreement shall terminate upon vesting of title in, or taking of possession by, the condemner, whichever occurs first. For purposes of this Section 10.01, a "material taking" shall mean a taking under the conditions in the preceding sentence that renders the Drain (i) inoperable in a commercially reasonable manner, and (ii) incapable of restoration to service within six (6) months of the date of the taking without the expenditure by Licensee of commercially unreasonable sums. In the event of a material taking, Licensee shall receive compensation only for the taking and damaging of the Drain, relocation expenses and loss of business or interference with Licensee's operations and, as to the last three such items, only to the extent separately awarded by the court or tribunal fixing the award, and not as a deduction from the value of the land or the right to use the segment of RW Route taken. The remaining award balance and interest thereon, as well as the award for the land value and interest thereon, shall accrue to Licensor. Under no circumstances shall Licensee be entitled to any portion of the award representing a "bonus value" and any other sums due hereunder.

Section 10.02 Non-Material Taking. In the event of a non-material taking or condemnation by any competent authority for any public or quasi-public use or purpose of

the whole or a part of the RW Route during the Term, this License Agreement shall not terminate by reason thereof. For purposes of this Section 10.02, a "non-material taking" shall mean a taking under the conditions in the preceding sentence that leaves the Drain (i) operable in a commercially reasonable manner or (ii) capable of restoration to service within six (6) months of the date of the taking through the expenditure by Licensee of commercially reasonable sums. In the event of a non-material taking, Licensee shall continue to pay any sums due hereunder but shall be entitled to an equitable adjustment of such Fees in the event Licensee is required to expend sums to restore the Drain to service. Except to the extent it may be prevented by the terms of the order of the condemning authority and except as qualified herein, Licensee shall perform and observe all of Licensee's covenants, conditions and obligations as though such non-material taking or condemnation had not occurred.

ARTICLE 11 ASSIGNMENT AND TRANSFER

Section 11.01 Assignment and Transfer. Except as provided below, this License Agreement may not be assigned, and the rights conveyed hereby may not be pledged, transferred, sold, conveyed, mortgaged or encumbered by Licensee without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Notwithstanding the foregoing, Licensee may assign this License Agreement and the rights hereunder to: (i) any parent, subsidiary or affiliated company without the consent of Licensor, but with written notice to Licensor; and (ii) a successor or assign of Licensee's entire interest in the Drain upon written notice (including the proposed assignment form evidencing the permitted assignee's assumption of all of Licensee's obligations on a quitclaim basis). Licensee shall be relieved of its removal, restoration and reimbursement obligation hereunder upon conveyance to Licensor of title to the Drain.

Section 11.02 Termination upon Bankruptcy. Either party shall have the option to terminate this License Agreement, upon written notice to the other, if a receiver is appointed for such other party (or any material portion of such party's property), if such party makes an assignment for the benefit of its creditors, or if a petition is filed by or against such party under any bankruptcy or insolvency law and such petition is not stayed or dismissed for ninety (90) days and any of the following occur:

- (i) Such party's obligations under this License Agreement are not assumed by the Receiver, Trustee or Debtor-in-Possession in any such proceeding within ninety (90) days after the filing of the petition,
- (ii) Such obligations are so assumed, but such party's subsequent obligations are not met in accordance with the terms hereof or such party is otherwise subsequently in violation of this License Agreement, or
- (iii) Such other party is dissolved or otherwise ceases to exist as an ongoing business concern (but not including: a change in the ownership of such party; a change in such party's jurisdiction of organization or organizational form, such as a change from a limited liability company to a corporation (or vice versa); or such party's merger into another entity of similar or greater size and/or creditworthiness as of the date hereof, or similar events).

ARTICLE 12
DEFAULTS AND REMEDIES

Section 12.01 Defaults and Remedies. Each of the following shall be an "Event of Default" under this License Agreement:

- (i) Failure of Licensee to pay when due any sum due hereunder within thirty (30) days following notice from Licensor;
- (ii) The subjection of any right or interest of Licensee hereunder to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days;
- (iii) The filing of a mechanic's or materialman's lien against all or any part of the RW Route because of acts or omissions of Licensee or its agents unless released within forty-five (45) days following demand by Licensor;
- (iv) Except as permitted under Section 11.01, the pledge, transfer, sale, conveyance, mortgage, assignment or encumbrance of this License Agreement unless released within (30) days following demand by Licensor;
- (v) Failure of either party to perform any non-monetary obligation within thirty (30) days following notice from the other party; provided, however, that if such default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as is reasonably necessary to complete a cure (not to exceed one hundred twenty (120) days), provided such party commences cure within the thirty (30) day period and proceeds diligently thereafter.

Section 12.02 Termination upon Failure to Cure. If any Event of Default shall continue uncured following notice of default as required hereunder, the non-defaulting party may terminate this License Agreement by giving the defaulting party notice of termination. In the event Licensor terminates this License Agreement due to an Event of Default caused by Licensee, Licensee shall promptly remove the Drain and depart from the RW Route. If in such event Licensee fails to remove the Drain within thirty (30) days' notice in writing from Licensor, Licensor may arrange for removal at Licensee's expense, so long as the electric facilities are de-energized.

Section 12.03 Licensor's Self-Help upon Licensee's Failure to Cure. In addition to the rights set forth in Section 12.02 and elsewhere in this License Agreement, upon the occurrence of any Event of Default caused by Licensee and Licensee's failure to cure within the specified period, Licensor may engage in self-help by (i) paying or causing to be paid any reasonable sum, or (ii) taking or causing to be taken any reasonable action, necessary to cure such default, and Licensee shall reimburse to Licensor such reasonable sums paid, or reasonable costs and expenses of acts taken, together with all costs of collection, including reasonable attorney's fees.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES

Section 13.01 Representations and Warranties. Each party covenants and warrants to the other that: (i) it has full right, power and authority to execute this License Agreement as further subject to the terms as conditions set forth in this agreement; (ii) it has been duly incorporated or registered and is validly existing as a corporation in good standing under the laws of the state of its incorporation and is duly qualified to do business in each state in which it is required to be so qualified to perform its obligations hereunder; and (iii) the execution and delivery of this License Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary corporate actions and do not violate any provision of law or the party's certificate of incorporation or bylaws.

ARTICLE 14
CONFIDENTIALITY

Section 14.01 Treatment of Confidential Information. During and after the term of this License Agreement, Licensor and Licensee (including their respective employees, officers, agents and directors) shall treat as confidential and proprietary and not disclose without the prior written consent of the other party (except as necessary to perform the services contemplated by this License Agreement, and then only on a confidential basis satisfactory to both parties) any information, whether oral or written, or any description (including any technical information, experience or date), of the other party's plans, operations or customers, which may come within its knowledge. This provision shall not apply to any information requested by any Federal, State, or Local unit of government, any regulatory agency, or any court of competent jurisdiction.

Section 14.02 Compelled Disclosure of Confidential Information. In the event either party is required by subpoena, court, or administrative order to disclose any confidential or proprietary information, it shall give immediate written notice to the other party. Thereupon, the party whose information is subject to disclosure may interpose any and all objections it may have to such disclosure. The foregoing obligation shall survive the termination or expiration of this License Agreement, and shall continue until a written release is given by the other party.

ARTICLE 15
NOTICES

Section 15.01 Notices. Any notices or demands by or from Licensor to Licensee, or Licensee to Licensor, shall be in writing and shall be deemed given upon (i) personal delivery to the addressee, (ii) five (5) days after deposit into United States mail, postage prepaid, certified mail, return receipt requested, or (iii) one (1) day after delivery to United States Postal Service Express Mail or similar overnight delivery service. Until notified of a different address, all notices shall be addressed to the parties as follows:

Section 15.02

If to Licensor:
Jackson & Lansing Railroad Company

Attention: General Counsel
38235 Executive Drive
Westland, Michigan 48185

If to Licensee:

City of Mason
Attention: Deborah S. Stuart, City Administrator
201 West Ash Street
Mason, Michigan 48854

ARTICLE 16 MISCELLANEOUS

Section 16.01 Binding Effect of License. Each of the covenants, conditions and obligations in this License Agreement shall inure to the benefit of and shall be binding upon the permitted assigns and successors of Licensee.

Section 16.02 Cumulative Remedies. The rights and remedies provided by this License Agreement are cumulative and the use of any one right or remedy by any person shall not preclude or waive its right to use any or all other available remedies. The rights and remedies hereunder are given in addition to any other rights the parties may have at law or equity, by statute, ordinance or otherwise.

Section 16.03 Failure to Pursue Remedies. The failure to seek redress for violation of or to insist upon the strict performance of, any provision of this License Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

Section 16.04 Governing Law. This License Agreement and the rights hereunder shall be interpreted in accordance with the laws of the State of Michigan, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

Section 16.05 Integration. This License Agreement constitutes the entire agreement pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. Any amendment, change, modification or waiver of the terms, conditions or obligations of this License Agreement shall be made in writing and signed by the parties' duly authorized representatives.

Section 16.06 Interpretation. All references herein to "Articles" and "Sections" shall refer to corresponding provisions of this License Agreement. Whenever the words "include," "includes" or "including" are used in this License Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this License Agreement shall refer to this License Agreement as a whole and not to any particular provision of this License Agreement.

Section 16.07 Recordation. Neither party hereto shall record this License Agreement without the written consent of the other party hereto; however, upon the request of either party, the other party shall join in the execution of a memorandum or "short form" of this

License Agreement for the purpose of recordation. The memorandum or short form shall describe the parties and the RW Route and shall incorporate this License Agreement by reference.

Section 16.08 Severability. The invalidity or unenforceability of any particular provision of this License Agreement shall not affect the other provisions hereof, and this License Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

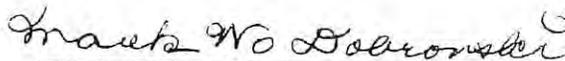
Section 16.09 Existing Agreements. This License Agreement shall in no way alter, amend, or replace any existing License Agreements between Jackson & Lansing Railroad Company or its predecessors-in-interest, and US Signal Company, L.L.C. or its predecessors-in-interest.

Section 16.10 Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and within the same agreement. Such counterparts shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart, and signatures sent through facsimile or scanned copy through electronic mail shall be considered to be binding to the same extent as an original signature.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement as of the day and year first above written.

Licensor:

**JACKSON & LANSING RAILROAD
COMPANY**



By: Mark W. Dobronski
Its: President

Date: JUNE 30, 2016

Licensee:

CITY OF MASON

By: Deborah S. Stuart
Its: City Administrator

Date: _____, 2016

EXHIBIT "A"

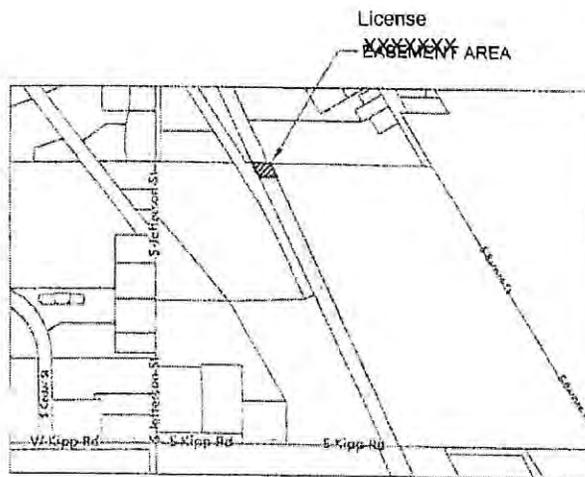
PARCEL NUMBER: 33-19-10-09-503-001

OWNER: JACKSON & LANSING RAILROAD COMPANY

PROPERTY ADDRESS:

OWNER'S ADDRESS

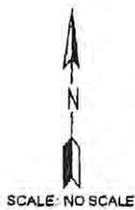
LOCATION MAP



Alteration Made per Parties' agreement.

Licensor's Initials

Licensee's Initials



4083 Grand Oak Drive
Suite A100
Lansing, MI 48911
T: 517.587.1100
F: 517.587.0336
engdot.com

EXHIBIT "A"

PARCEL NUMBER: 33-19-10-09-503-001

OWNER: JACKSON & LANSING RAILROAD COMPANY

PROPERTY ADDRESS:

OWNER'S ADDRESS:

PARCEL DESCRIPTION:

License

XXXXXXXXXX

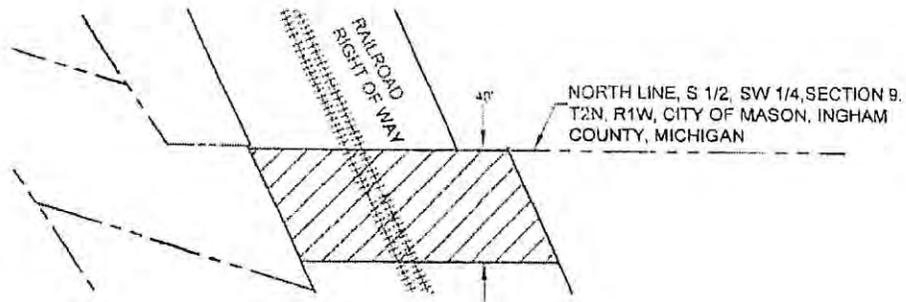
EASEMENT DESCRIPTION:

Alteration Made per Parties' Agreement.

Licensor's Initials

Licensee's Initials

THE NORTH 40 FEET OF THAT PART OF THE RAILROAD PROPERTY LYING IN THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 1 WEST, CITY OF MASON, INGHAM COUNTY, MICHIGAN.



Eng.TM
Engineering & Surveying

4053 Grand Oak Drive
Suite A100
Lansing, MI 48911
T: 517.687.1100
F: 517.687.6336
eng901.com

SHEET 2 OF 2

EXHIBIT B

Jackson & Lansing Railroad Company
38235 Executive Drive
Westland, Michigan 48185

Mark W. Dobronski

Title: President
Email Address: President@abrailroad.com
Phone Number: (734) 641-2300

C. Robert Dobronski III

Title: Vice President and General Counsel
Email Address: CRDobronski@abrailroad.com
Phone Number: (734) 641-2300

Karen Merritt

Title: Chief Administrative Officer
Email Address: KMerritt@abrailroad.com
Phone Number: (734) 641-2300

Philip Hensley

Title: Jackson & Lansing Superintendent
Email Address: PhilHensley@abrailroad.com
Phone Number: (734) 334-6680

Dennis Ludwig

Title: MOW Superintendent
Email Address: DLudwig@abrailroad.com
Phone Number: (734) 334-7994

EXHIBIT C

Deborah S. Stuart

Title: City Administrator
Email Address:
Phone Number: (517) 676-9155

Thomas M. Hitch

Title: City Attorney
Email Address: tomhitch@mcgintylaw.com
Phone Number: (517) 351-0280

EXHIBIT D

Included Within Exhibit D:

General Description:

STORM SEWER AND MANHOLE EASEMENT AGREEMENT

Ingham MI 20695

THIS EASEMENT AGREEMENT is made as of _____, 2016, between Consumers Energy Company, a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201, (hereinafter "Grantor"), and City of Mason, a Michigan municipal corporation, 201 West Ash, Mason, MI 48854, (hereinafter "Grantee").

WITNESSETH: Grantor, for and in consideration of the sum of \$4,125.00, does hereby release and QUIT-CLAIM to Grantee, its successors and assigns forever, an easement for the sole and only purpose of constructing, operating, maintaining, repairing, inspecting, and removing one eighteen (18) inch diameter underground storm sewer pipe and one four (4) foot diameter manhole located on the described parcel (hereinafter collectively "Facilities"), said easement being situated in the Southwest 1/4 of Section 9, Town 2 North, Range 1 West, City of Mason, County of Ingham, State of Michigan (hereinafter "Easement Strip") as more particularly described as follows:

An easement over part of the Southwest 1/4 of Section 9, Township 2 North, Range 1 West, City of Mason, Ingham County, Michigan said easement be more particularly described as commencing at the Southwest corner of said Section 9, thence S89°48' 49"E 352.99 feet along the South line of said Section 9, thence N0°22'10"E 1328.78 feet to the point of beginning of the easement herein described also being the West line of Consumers Energy's property, thence N33°38'13"W 42.43 feet along said West property line, thence S77°40'54"E 71.93 feet to the East line of Consumers Energy's property, thence S33°38'13"E along said East line 25.00 feet, thence S89°12'45"E along said East line 28.69 feet to said East-West 1/8 line, thence S24°23'19"E along said East-West 1/8 line and along the East line of the Consumers Energy's property 60 feet, thence N71°38'44"W 93.07 feet, thence due North 15.93 feet, thence N67°24'59"W 27.95 feet to the point of beginning of the easement herein described. (Part of Parcel ID No. 33-19-10-09-351-010).

This Easement Agreement is given by Grantor and is accepted by Grantee subject to the following conditions and reservations:

1. This easement is non-exclusive. Grantor reserves the right to use and allow others to use the Easement strip for any purpose and in any manner whatsoever that does not unreasonably interfere with the exercise of the rights granted in this Easement Agreement, including but not limited to the construction of overhead and underground electric and gas facilities and the removal of trees and brush.

2. Grantor shall not be responsible for damage to the Facilities resulting from Grantor's, Grantee's, or any other third parties' use of its land. Grantor shall not be required to incur any cost or expense as a result of the use of Grantor's land pursuant to this Easement Agreement. Without limiting the generality of the foregoing, Grantor shall not be responsible for repairing any damage to the Easement Strip or to any improvements thereto or thereon that occurs during Grantor's, Grantee's, or any other third parties' activities on Grantor's land. If Grantee or third parties cause any damage to the Easement Strip, Grantee shall restore the Easement Strip to the same condition as it was prior to said damage and shall do so without cost to Grantor. Grantee shall be responsible for any increase in taxes assessed against Grantor's land as a result of Grantee's improvements pursuant to this Easement Agreement. Grantee shall be responsible for all personal property taxes assessed against its improvements located within the Easement Strip pursuant to this Easement Agreement.

3. Construction, operation, maintenance, repair, inspection, and removal of the Facilities shall comply with the following conditions, limitations, and requirements:

- a. Grantee shall contact the Utility Communications System (Miss Dig), phone number (800) 482-7171, prior to performing any excavation on the Easement Area, in accordance with Michigan Compiled Law 460.701 et seq., as amended by Public Act 174 of 2013 and any future amendments.
- b. Grantee shall submit final construction plans of Grantee's Facilities in electronic format and containing the designation "Ingham MI 20695" to Consumers Energy Company's Real Estate Department's Easement Grant Coordinator for review and acceptance prior to commencing any work at any time on Grantor's land, and Grantee agrees that the Facilities shall be installed in accordance with said accepted final construction plans.
- c. While working within the Easement Strip, Grantee shall not violate or cause Grantor to be in violation of the National Electrical Safety Code or any other applicable safety code. Furthermore, construction equipment operated on Grantor's fee strip shall at all times maintain a minimum separation of 15 feet from any energized conductor. If more stringent, OSHA/MIOSHA standards shall be observed. No dump trucks shall lift their beds under any electric lines that cross over the Easement Strip.
- d. No work performed by Grantee shall in any way affect or interrupt the continuity of service provided by Grantor's utility facilities now or hereafter located on Grantor's land or provided by third parties' utility facilities now or hereafter located on Grantor's land pursuant to an agreement dated prior to the date of this Easement Agreement.
- e. Grantee shall take appropriate measures to prevent erosion during construction activities on the Easement Strip and shall grade and re-seed all disturbed areas with warm season grasses after construction is complete.
- f. Upon completion of the construction of said Facilities, Grantee shall provide Grantor with as-built drawings of the Facilities indicating the exact location and depth of the Facilities within the Easement Strip.
- g. The design of the Facilities shall incorporate the expectation that the Grantor will be using heavy equipment on the Easement Strip; and therefore, the Facilities shall be capable of withstanding such loading. Grantee expressly acknowledges that Grantor has made Grantee aware that it or its vehicles may cause damage to the facilities in the use of the Easement Strip and its property in connection with is gas and electric business, and Grantee expressly accepts the risk of said damage and hereby accepts full responsibility for any damage caused by Grantor or Grantor's vehicles to Grantee's Facilities and waives and releases any claim that Grantee may have from time to time against Grantor related to damage caused by Grantor or Grantor's vehicles to the Facilities.

4. Grantee shall perform all work on the Easement Strip in compliance with all federal, state, and local laws respecting such work. Grantee shall be responsible at all times for obtaining and following any and all licenses and permits that may be necessary for said Facilities construction, operation, maintenance, repair, inspection, and removal, including but not limited to environmental, soil erosion, and sedimentation control permits. Upon request, Grantee shall provide copies of all such permits to Grantor.

5. GRANTOR HAS NOT AND DOES NOT HEREBY MAKE ANY EXPRESS, IMPLIED, OR STATUTORY REPRESENTATIONS OR WARRANTIES OR GIVE ANY INDEMNIFICATION OF ANY KIND TO GRANTEE CONCERNING THE EASEMENT STRIP, THE STATUS OF GRANTOR'S TITLE WITH RESPECT TO THE EASEMENT STRIP, THE EASEMENT STRIP'S CONDITION OR SUITABILITY, OR GRANTOR'S OR GRANTEE'S USE OF THE EASEMENT STRIP BEING IN COMPLIANCE WITH ANY STATUTE, ORDINANCE, OR REGULATION, INCLUDING, BUT NOT LIMITED TO THOSE RELATING TO THE ENVIRONMENT.

6. Grantee agrees to accept full responsibility and all liability from claims asserted by any person or persons for any type of bodily injury, death, or damage to property arising out of, relating to or resulting from the exercise of the rights granted in this Easement Agreement. Furthermore, Grantee shall to the fullest extent allowable by law indemnify, defend, and hold Grantor, its officers, employees, agents, affiliates, parent corporation, successors, and assigns harmless from and against any and all losses, liabilities, claims, damages, payments, actions, recoveries, settlements, judgments, orders, costs, expenses, attorney fees, penalties, fines, encumbrances, and liens arising out of injuries or damages to persons or property or both arising directly or indirectly out of the use of Grantor's land pursuant to this easement, including but not limited to claims arising out of Grantee's negligence, Grantor's and Grantee's concurrent negligence, or any other person's negligence, excepting only Grantor's sole negligence. The provisions of this paragraph shall survive the term or any termination of this Easement Agreement.

7. Grantee shall contractually require all contractors and subcontractors who perform work on Grantor's land to indemnify, defend, and hold Grantor harmless from claims asserted by any person or persons for any type of bodily injury, death, or damage to property arising out of, relating to or resulting from the exercise of the rights granted in this Easement Agreement.

8. Grantee shall, at its own expense, procure, maintain and keep in effect during the term of this Easement Agreement a Commercial General Liability Insurance Policy satisfactory to Grantor in form and substance, with a minimum combined bodily injury and property damage single limit of \$2,000,000 per occurrence. Such policies shall be written on an "occurrence basis", include Grantor as an additional insured, include contractual liability, and be primary and noncontributory to any insurance maintained by Grantor. At the time this Easement Agreement is executed, Grantee shall provide Grantor with a Certificate of Insurance evidencing such insurance coverage as provided for herein and evidence of any renewals thereof. Grantee shall be required to submit to Consumers Energy Company a standard industry ACORD Form Certificate of Liability Insurance or any other form approved by Consumers' Corporate Insurance Department. Grantee shall notify Grantor in writing immediately upon Grantee's receipt of any notice of cancellation of the insurance coverage required in this Easement Agreement. Further, it shall be the responsibility of Grantee to ensure that Grantee's contractors and subcontractors procure, maintain and keep in effect during the term of any construction, or any maintenance, repair, inspection, operating, and removal periods thereof, a Commercial General Liability Insurance policy equivalent to that described above. The Certificate of Liability Insurance must state the following: "Consumers Energy Company, its directors, officers, and employees are named as additional insureds with respect to the ongoing operations of the named insured. With respect to damage to Grantee's and its contractors' and subcontractors' property used on Grantor's land, Grantee and its contractors and subcontractors hereby agree to waive its rights of recovery against Grantor and if such property is insured to waive the insurer's rights to subrogation. It is expressly understood that the obtaining of the insurance as is herein provided, shall in no way limit or release Grantee's agreement to accept full responsibility and all liability under the provisions as provided herein. All information sent to Grantor pursuant to this paragraph shall contain the designation "Ingham MI 20695" and shall be sent to Consumers Energy Company, Corporate Insurance Department, EP10-243, One Energy Plaza, Jackson, Michigan 49201-2276, or such other address as Consumers may hereafter specify.

9. If use of Grantor's land pursuant to this Easement Agreement at any time results in the presence in, on or under Grantor's land (including but not limited to the groundwater underlying the land) of contaminants, hazardous waste, hazardous substances or constituents, or toxic substances, as currently or hereafter defined in applicable laws, Grantee shall, without cost to Grantor, promptly take: 1) all actions that are required by any federal, state, or local governmental agency or political subdivision, and 2) all actions that are necessary to restore Grantor's land to its preexisting condition, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies. The actions required by Grantee shall include, but not be limited to: a) the investigation of the environmental condition of Grantor's land, b) the preparation of any feasibility studies, reports, or remedial plans required by law or governmental policy, and c) the performance of cleanup, remediation, containment, operation, maintenance, monitoring, or restoration work, whether on or off Grantor's land. Grantee shall proceed continuously and diligently with such investigatory and remedial actions. Grantee shall promptly provide to Grantor, free of charge, copies of all test results and reports generated in connection with the above activities and copies of all reports submitted to any governmental entity. No cleanup, remediation, restoration, or other work required by this paragraph shall require or result in the imposition of any limitation or restriction on the use of Grantor's land, without Grantor's prior written approval and permission. In addition, Grantee agrees to accept full responsibility and all liability arising out of: a) the presence on or beneath Grantor's land, including but not limited to the groundwater underlying the land, of contaminants, hazardous waste, hazardous substances or constituents, or toxic substances, as currently or hereafter

defined in applicable laws, as a result of use of Grantor's land pursuant to this Easement; b) Grantee's violation or alleged violation of any federal, state, or local law related directly or indirectly to Grantee's exercise of the rights herein granted; or c) Grantee's failure to comply with the terms and conditions of this Easement. The provisions of this paragraph shall survive the term or any termination of this Easement Agreement.

10. The easement is granted by Grantor subject to any licenses, leases, easements, or other interest in Grantor's land previously granted by Grantor or its predecessors in title and to any such interests reserved to other parties in instruments granted to Grantor or its predecessors in title, whether or not of record, including but not limited to the rights and interests granted to: (1) City of Mason, a Michigan municipal corporation in a water main easement dated April 22, 2008, and recorded in Liber 3304, Page 1145 on April 28, 2008, Ingham County Records; Grantee is solely responsible for complying with any applicable requirements, including giving required notices, securing necessary consents and permits from existing lessees, licenses, easement holders, and owners of other interests, and to comply with other requirements of such existing leases, licenses, easements, and other instruments.

11. Grantee's acceptance of this Easement Agreement shall be deemed an acceptance of the terms and conditions of this grant.

12. The covenants and agreements set forth in this Easement Agreement shall run with the land and be binding upon and inure to the benefit of the respective successors and assigns of the parties.

13. The Easement Agreement shall terminate automatically upon the actual abandonment of the Facilities, which shall occur at any time that either Grantee provides Grantor with a written notice of abandonment or at such time, that the easement is no longer used for the purposes granted herein for a continuous period of two (2) years. Furthermore, should Grantee's rights for similar facilities on adjoining properties expire, terminate, or otherwise cease to exist, then Grantor may terminate this Easement Agreement by providing Grantee with written notice of said termination. In the event of termination, Grantee or its successors or assigns shall restore Grantor's land to a condition that is satisfactory to and approved by Grantor in Grantor's sole discretion, and upon completion of said restoration shall execute and deliver to Grantor a written release acceptable to Grantor in recordable form.

14. This Easement Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Easement Agreement. There are no agreements, representations, statements, or understandings which have been relied on by the parties which are not stated in this Easement Agreement. This Easement Agreement may be modified or amended only by a written agreement signed by both parties.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed in its corporate name and by its duly authorized representative as of the day and year first above written.

Consumers Energy Company

By: _____
Terri R. Melchiori

Its Real Estate Asset Manager

Acknowledged before me in Jackson County, Michigan, on _____, 2016, by Terri R. Melchiori, Real Estate Asset Manager, of Consumers Energy Company, a Michigan corporation, for the corporation.

Notary Public

County, Michigan
Acting in _____ County
My commission expires: _____

City of Mason

By: _____
Deborah Stuart

Its: City Administrator

Acknowledged before me in _____ County, Michigan, on _____, 2016, by Deborah Stuart, City Administrator of the City of Mason, a Michigan municipal corporation, for the corporation.

Prepared by:
Mary J. Lawrie (P75376)
Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201

Return recorded instrument to:
Consumers Energy Company
Business Services - Real Estate
Attn: Carrie Main, EP7-437
One Energy Plaza
Jackson, Michigan 49201

Introduced:
Second:

CITY OF MASON

CITY COUNCIL RESOLUTION

A RESOLUTION TO AUTHORIZING THE CITY TO EXECUTE A LICENSE AGREEMENT WITH JACKSON & LANSING RAILROAD COMPANY AND AN EASEMENT AGREEMENT WITH CONSUMERS ENERGY, AND AUTHORIZING THE CITY ATTORNEY TO TAKE THE REQUIRED STEPS TO INTERVENE IN *J & J PROPERTIES OF MASON, LLC v MASON PUBLIC SCHOOLS, ET AL*, INGHAM COUNTY CIRCUIT COURT FILE NO. 13-1269-CK, IN ORDER TO FACILITATE THE RESOLUTION OF THE LITIGATION

September 6, 2016

WHEREAS, the City of Mason has previously authorized the City Attorney to participate in and seek to facilitate the resolution of the above-referenced litigation involving the Mason Public Schools;

WHEREAS, the parties to that litigation, Capex Land Company, Inc., and the City of Mason have determined that constructing a stormwater drain on and across property in the vicinity of Mason High School will lead to the settlement of said litigation;

WHEREAS, the City Attorney has provided a memorandum outlining the steps necessary to assist in bringing the litigation to a successful conclusion; and

WHEREAS, the City of Mason believes it is in its best interest to continue the assistance of the parties in resolving the litigation and the construction of a storm water drain near Mason High School.

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council agrees to enter into the License Agreement with the Jackson & Lansing Railroad Company and the Easement Agreement with Consumers Energy, copies of which are attached hereto, and hereby authorizes the Mayor and City Clerk to sign said agreements on behalf of the City of Mason.

2. The City of Mason hereby agrees to enter the above-referenced litigation as a party defendant for the sole purpose of facilitating the construction of the stormwater drain that is the subject of said litigation, and consents to be bound by orders that may be issued by the court that pertain to the settlement in this action.

3. The City Attorney is authorized to agree to terms of a settlement outlined in the City Attorney memorandum dated August 30, 2016, a copy of which is attached, but, other than the fees for the City Attorney, the City of Mason shall be liable for no costs or fees associated with the engineering, construction, and inspection of the stormwater drain.

4. Upon final inspection and approval by the City Engineer of the storm drainage project, the City shall assume ownership and maintenance of the storm drain.

Yes ()

No ()

CLERK'S CERTIFICATION: I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the Mason City Council at a public meeting held on Tuesday, September 6, 2016, the original of which is part of the Council's minutes.

Deborah J. Cwierniewicz, City Clerk
City of Mason
Ingham County, Michigan

Drafted by and approved as to form:

Thomas M. Hitch (P25558)
Mason City Attorney
601 Abbot Road, PO Box 2502
East Lansing, MI 48826-2502
(517) 351-0280

MEMORANDUM

TO: Mason City Council

FROM: Thomas M. Hitch, City Attorney *TMH*

RE: **CITY ATTORNEY REPORT**

DATE: August 31, 2016

The following is my report to the City Council on several issues in which our office has been engaged:

1. *Esquire Development & Construction, Inc. v City of Mason* (Michigan Tax Tribunal Docket Nos. 14-5644 and 15-4504)

On August 17, 2016, the Michigan Court of Appeals denied the application for leave to appeal filed by Esquire Development. As the Council may recall, Esquire Development had filed a tax appeal before the MTT seeking recovery of taxes that, under its theory, go back to 2006. The Michigan Tax Tribunal rejected the assertions made by Esquire Development and has limited its recovery, if any, to the two tax years under appeal (2014 and 2015).

The Court of Appeals has now rejected Esquire's argument that it must be heard immediately, before any final action by the Michigan Tax Tribunal. The Tax Tribunal has issued an order setting the Prehearing General Call for the January 3 - January 17, 2017 time period. Given this track record, it is my opinion that Esquire may be filing an application for leave to appeal in the Michigan Supreme Court.

2. *Marcia O'Brien and Richard O'Brien v City of Mason, et al* (U.S. District Court File No. 1:16-cv-391-GJQ-RSK)

Last Friday, August 26, 2016, I met separately with Chief Stressman and Officer Reckling in preparation for responding to plaintiffs' requests for discovery.

3. **Traffic Court/Diversion Program**

In the month of August, there were 15 pre-trials and two cases scheduled for jury selection. Both cases were resolved at that time without the need to pick a jury.

In the Diversion Program, we have had activity in all three programs involving Marijuana Diversion, MIP Diversion, and the Retail Fraud Diversion. There is one person participating in the MIP Diversion as well as being a participant in the Retail Fraud Diversion Program. There was one person who was invited to participate in the MIP Program but did not respond, so a complaint and

Page 2

August 31, 2016:

warrant was prepared. As it relates to the Retail Fraud Diversion, there are four participating in the program (including the one noted above). One person did not complete the program and a complaint and warrant was prepared, and two individuals completed the program. As it pertains to the Marijuana Diversion, there are three people participating in the program, with four outstanding invitations for which we have yet to have a response.

Council Meeting

I will be in attendance at the upcoming Council meeting. As you can see from the agenda, I have matters relating to the *J & J Properties v Mason Public Schools* matter, as well as the issue relating to the cancellation of City Council meetings.

bks